

No. 5740

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

D. L. McCLUNG,

Appellant

VS.

TWIN FALLS NORTH SIDE LAND AND WATER COMPANY, a Delaware Corporation, and THE CONTINENTAL AND COMMERCIAL TRUST AND SAVINGS BANK, a Corporation, Trustee,

Appellees

Transcript of the Record

On Appeal from the District Court of the United States for the District of Idaho, Southern Division.

FILED

MAR 1 1932

PAUL B. SUTTON

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D. L. McCLUNG,

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Appellees

Transcript of the Record

On Appeal from the District Court of the United States for the District of Idaho, Southern Division.

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

J. B. ELDRIDGE,
Boise, Idaho.
Attorney for Appellant.

WALTERS, PARRY AND THOMAN,
Twin Falls, Idaho.
Attorneys for Appellees.

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*In the District Court of the United States for the
District of Idaho, Southern Division*

OLIVER HILL; W. P. RICE; E. C. GLEASON;
CLARA T. VEAZIE; H. E. BARRETT; A. A.
HOLBROOK; ROMAN M. TISS; LEWIS A.
LEINBAUGH; J. F. HOBBS; JOHN T.
THORPE,

Plaintiffs

vs.

TWIN FALLS NORTH SIDE LAND AND WA-
TER COMPANY, a Delaware Corporation, and
THE CONTINENTAL AND COMMERCIAL
TRUST AND SAVINGS BANK, a Corporation,
Trustee,

Defendants

ROBERT ROGERSON, KENNETH McLEOD and
BLAINE FURGERSON,

Intervenors

NOTICE OF MOTION

To the above named defendants and to the inter-
venors and to E. A. Walters, Esq., Hawley and
Hawley, Esquires, and to E. M. Wolfe, Esq., their
attorneys of record.

You and each of you will please take notice that
the supplemental complainant, D. L. McClung, will
move the court at the court-room of the Federal
Building in Boise, Idaho, on the 22nd day of Decem-
ber, 1927, at the hour of 10:00 o'clock A. M. of said

day to make an order permitting the supplemental complainant D. L. McClung to file his supplemental complaint, herein copy of which is attached to the motion, motion and copy of supplemental complaint being hereto attached and made a part thereof.

That said motion will be made upon the supplemental bill of complaint of D. L. McClung and upon the original pleadings, papers, records and files in said cause.

J. B. ELDRIDGE,

Attorney for Supplemental Complainant

Residence, Boise, Idaho.

Endorsed: Filed Dec. 7, 1927.

By W. D. McREYNOLDS, Clerk

By VERNA THAYER, Deputy.

(Title of Court and Cause)

MOTION

Comes now the supplemental complainant, D. L. McClung, and moves the court for an order permitting the supplemental complainant to file his supplemental bill of complaint for the reasons and upon the grounds set forth in said supplemental bill of complaint, copy of which is hereto attached and made a part hereof.

J. B. ELDRIDGE,

Attorney for Supplemental Complainant,

D. L. McClung,

Residence, Boise, Idaho.

Endorsed: Filed Dec. 7, 1927.

W. D. McREYNOLDS, Clerk.

By VERNA THAYER, Deputy.

(Title of Court and Cause)

SUPPLEMENTAL BILL IN EQUITY

Comes now D. L. McClung and for SUPPLEMENTAL BILL IN EQUITY alleges and states:

I

That on the 13th day of April, 1916, Oliver Hill and others filed their Amended Bill of Complaint in said cause, to which reference is hereby made and by such reference made a part hereof.

II

That on December 20, 1917, pursuant to motion theretofore made, Robert Rogerson and others filed their Bill of Intervention in said cause December 20, 1917, to which reference is hereby made and by such reference made a part hereof.

III

That on December 20, 1917, stipulation between all said litigants was filed for decree, copy of which marked EXHIBIT "A" is hereto attached and made a part hereof.

IV

That decree was entered on December 20, 1917,

in said cause, copy of which marked EXHIBIT "B" is hereto attached and made a part hereof.

V

That your complainant herein was at the time of the filing of the original and said Amended Bill and Bill in Intervention, Stipulation and Decree, and is now the owner of the following described land, to-wit: The Northeast quarter of the Southeast quarter and the Southeast quarter of the Northeast quarter of Section Two, Township Ten South, Range 18 East, Boise Meridian, Jerome County, State of Idaho, situate upon and as a part of Northside Irrigation Project and the owner of the right to receive one-eightieth second foot for each acre of land under what is known as first segregation contract as set forth in said Amended Bill and was one of the parties on whose behalf said cause was prosecuted and maintained, and on whose behalf said stipulation was signed and on whose behalf said decree was rendered.

VI

That on or about the months of April and July, 1907, respectively, one Fred Waite, the predecessor in interest of your supplemental complainant entered into his certain water right contracts with Twin Falls North Side Land and Water Company, said contracts being of the same kind and character as the settlers' contracts set forth and described in

the Amended Bill and the Bill in Intervention in this cause wherein and whereby a water right was acquired for the lands belonging to this supplemental complaint described as aforesaid:

That subsequently stock certificates in North Side Canal Company were issued to supplemental complainant herein, copies of one of said contracts and certificates marked EXHIBITS "C" and "D" are hereto attached and made a part hereof said contract and stock certificate being of the same character and import as issued to all settlers under said project.

VII

That your supplemental complainant has performed all the obligations on his part to be performed under said contracts and hereby offers to do equity and to subject himself to the equitable consideration of the court.

VIII

That under the terms of said decree the United States District Court for the District of Idaho adjudged and decreed that the several contracts set forth in the Bill of Complaint and their amendments shall remain in full force and effect between all parties concerned therein; that your supplemental complainant is deeply interested in said contracts.

IX

That said Court adjudged and decreed that the construction company had the right to sell and keep sold 170,000 shares of stock carrying with it the right to irrigate 170,000 acres and no more, and that no other or further shares of stock should be sold if by so doing the settlers' contracts would be violated.

X

That Twin Falls North Side Land and Water Company has made no attempt until within approximately the last few months to sell or dispose of stock in North Side Canal Company, Ltd., in excess of 170,000 shares and has within said time offered for sale and is now offering for sale, and unless restrained and enjoined by order of this court, will sell stock in excess of 170,000 shares which shares will entitle land in excess of 170,000 acres to receive water for irrigation out of the present water supply of the North Side Canal Company to the injury of complainant and in violation of his contract with said Twin Falls North Side Land and Water Company, then and now in force and in violation of said decree; that the present available water supply furnished by said Land and Water Company for said North Side Canal Company is insufficient to supply the amounts already contracted to be furnished to settlers; that the present capacity of the irrigation system furnished by said Land and Water Com-

pany for said North Side Canal Company is not sufficient to permit of the delivery of the amounts already contracted to be delivered to settlers by said Land and Water Company; that the dependable operating capacity of the system is not more than 3360 second feet and there is a water loss of 40 per cent of making deliveries through said system; and that 3360 second feet of water if available in the system will only furnish and deliver the contract amounts of water to 163,080 acres under said state and settlers' contracts now outstanding.

XI

That said Twin Falls North Side Land & Water Company, defendant herein, is offering to sell 15,000 shares of stock more representing water for use on 15,000 acres additional lands to be irrigated from the said water supply, and to be irrigated from the canal system belonging to the lands of the North Side Project as aforesaid, which are wholly and notoriously inadequate to furnish water, therefore, in that said system has never been completed in conformity with said decree and that further sale of additional shares of stock and water rights to additional lands as is now proposed and threatened by defendant, Twin Falls North Side Land and Water Company as aforesaid, and in violation of said decree, will cause great and irreparable injury to your Supplemental Complainant and all others similarly situated.

XII

That there are a large number of water users holding contracts similar to that of your supplemental complainant herein, and on account of the vast numbers interested as your complainant is interested, it would be impracticable to bring them all before the court and your supplemental complainant brings this supplemental proceeding on behalf of himself and all such persons similarly situated, on whose behalf the Bill in Intervention herein was prosecuted, and decree entered thereon.

That your supplemental complainant and others similarly situated have no plain, speedy and adequate remedy at law.

XIII

That your supplemental complaint brings this action in aid of said former decree rendered by this court and for the enforcement thereof, and to render said decree operative and effective.

XIV

That your supplemental complainant and those on whose behalf this action is brought are citizens and residents of the State of Idaho.

That all said acts and doings as aforesaid are contrary to equity in good conscience and tend to manifest wrong, injury and oppression of this supplemental complainant and those similarly situated in the premises. In consideration whereof and for

as much as this plaintiff is remediless in the premises at and by the strict rules of a Common Law and can only have relief in a Court of Equity where matters of this nature are recognizable and relievable, this plaintiff now prays the Court:

First

That an order of this court be issued permitting supplemental complainant to file his supplemental bill herein.

Second

That defendant, Twin Falls North Side Land and Water Company, be restrained and enjoined permanently from the sale of any further water rights to be supplied under said state and settlers' contracts, out of the water supply available at the time said decree was entered, and restrained and enjoined from the sale of any further water or water to be carried through said canal as now constructed.

Third

That Twin Falls North Side Land and Water Company be required to complete said irrigation system in conformity with said contracts.

Fourth

That if the Court shall find it expedient and necessary, that the Court appoint a party to take charge of said irrigation works and complete the

same at the expense of said Twin Falls North Side Land and Water Company, so as to make possible the delivery of the contracted amounts of water for 170,000 acres to the end that the settlers' contracts shall not be violated.

Fifth

That your supplemental complainant and those similarly situated have such other and further relief as to the Court may appear just in the premises.

J. R. ELDRIDGE,

Attorney for Supplemental Complainant

Residence: Boise, State of Idaho.

STATE OF IDAHO)
) ss
 COUNTY OF ADA)

D. L. McClung being first duly sworn deposes and says: That he is the supplemental complainant in the above entitled cause and has read the within and foregoing supplemental bill of complaint and knows the contents thereof, that he believes the facts stated in the pleading to be true.

D. L. McCLUNG.

Subscribed and sworn to before me this the 9th day of November, 1927.

C. H. ROBERTS,

Notary Public

Residing at Boise, Idaho

(SEAL)

EXHIBIT "A"

IN EQUITY

*In the District Court of the United States for the
District of Idaho, Southern Division*

OLIVER HILL; W. P. RICE; E. C. GLEASON;
CLARA T. VEAZIE; H. E. BARRETT; A. A.
HOLBROOK; ROMAN M. TISS; LEWIS A.
LEINBAUGH; J. F. HOBBS; JOHN T.
THORP,

Plaintiffs

VS

TWIN FALLS NORTH SIDE LAND AND WA-
TER COMPANY, a Delaware Corporation, and
THE CONTINENTAL AND COMMERCIAL
TRUST AND SAVINGS BANK, a Corporation,
Trustee,

Defendants

No. 544

STIPULATION SETTLING CASE

AND FOR JUDGMENT

For the purpose of effecting a complete and financial settlement of the above entitled action, and of all the issues and differences set forth or involved therein, it is hereby stipulated and agreed by and between the plaintiffs above named, acting for themselves and for all other persons and associations who have contributed funds for the prosecution of this cause, or have otherwise assisted in

such prosecution, and for all who are in privity with said plaintiffs and for all who may lawfully be bound by the acts of said plaintiffs herein (said plaintiffs and all other such persons or association being hereinafter called the parties of the first part) and the Twin Falls North Side Land and Water Company, one of the defendants above named, (hereinafter called the Construction Company,) as follows; viz:

1. The Construction Company will complete its irrigation system in accordance with the terms and conditions of its existing contracts with the State of Idaho, (including the contracts dated January 22, 1916, between the Bondholders' Committee so called, and said State) and when said system shall have been so completed, and such completion shall have been duly certified by the Engineer of said State as provided in said contracts, then and thereupon a full and complete compliance will have been effected as between the Construction Company and said State and as between the Construction Company and the holders of contracts for purchase of its water rights.

2. When its irrigation system shall have been so completed and shall have been accepted by the Board of Land Commissioners of said State then and thereupon the Construction Company will cause to be assigned to the North Side Canal Company, Limited, all of the right, title and interest in and to the Jackson Lake Reservoir, and to all storage

water therein (estimated at 315,000 acre feet), as embodied and set forth in that certain agreement between the United States of America and the Kuhn Irrigation and Canal Company, a Delaware corporation, dated February 25, 1913, a copy of which is now on file in the office of said Board of Land Commissioners, and will at once cause a proper assignment of said last mentioned agreement to be duly executed and placed in escrow in the Pacific National Bank of Boise, Idaho, to be delivered to said Canal Company if and when the foregoing provisions of this paragraph shall have become effective.

3. The Construction Company may sell, and may keep sold as against any cancellation or foreclosures heretofore or hereafter effected, 170,000 shares in the capital stock of said Canal Company, (which shall represent the right upon the part of the holders or purchasers of such shares to irrigate 170,000 acres of land from the irrigation system of the Construction Company,) and may collect the purchase price therefor, upon the understanding, however, that the sales of such stock, aggregating something more than 172,000 shares thereof, heretofore made by the Construction Company, will be adjusted within the limit above provided through the cancellation of sufficient of such shares which have heretofore come under its control, through foreclosure or otherwise.

4. If at any time in the future the Construction Company, its successors or assigns, shall conclude that the said irrigation system and the water supply therefor, will serve, or can be made to serve, more than 170,000 acres of land, and if the Construction Company is then unable to agree with said Canal Company as to what excess, if any, may be so served, then and in that event, and so often as such may be the case, the Construction Company, its successors or assigns, may bring an action in any court of competent jurisdiction to have said question judiciously determined; and the question as to where the water must be measured to the contract holder under his contract with the Construction Company, and the question as to how much water must be so measured, as to any excess above said 170,000 acres, are not covered or affected by this stipulation and agreement or by any judgment which may be rendered hereunder.

5. The several contracts between the State of Idaho and the Construction Company and said Bondholders Committee, and the various amendments to said contracts, are now and shall be binding and of full force and effect as between all parties concerned therein, except as the invalidity of any such contract may be pleaded in defense of any suit brought against any individual, but no statement contained in this stipulation and agreement shall be taken in any such suit as evidence of non-performance by the Construction Company of any

of its obligations, covenants or agreement set forth in its several contracts with the State of Idaho or with any contract holders.

6. The parties of the first part will not collectively or individually, commence any other action, actions or proceedings, before any court or board, for the determination or consideration of any or either of the issues, of law or fact, involved in this action; and this stipulation and agreement, as well as the judgment to be rendered hereunder, may be pleaded or shown in evidence, and shall constitute a complete defense or estoppel in any such action, actions or proceedings.

7. All of the terms and provisions of this stipulation and agreement may be taken by the Court as true and with the force of evidence, for the purpose of any judgment or decree which the Court may deem proper to enter herein and findings of facts and conclusions of law are hereby expressly waived.

8. The Continental and Commercial Trust and Savings Bank, as Trustee, becomes a party to this stipulation and agreement through its attorneys of record in this case for the purpose only of depressing its consent to the entry of judgment hereunder.

Dated December 18, 1917.

R. V. WILCOX,

ADAM B. BARCLAY,

E. M. WOLFE,

GUTHRIE & BOWEN & A. A. FRASER,

As Attorneys for Parties of the First Part

P. S. HADDOCK,
 E. A. WALTERS,
 COBB, WHEELRIGHT & DILLIE,
*As Attorneys for the Construction
 Company.*
 HAWLEY & HAWLEY,
As Attorneys for Said Trustee.

EXHIBIT "B"
 IN EQUITY

*In the District Court of the United States for the
 District of Idaho, Southern Division.*

OLIVER HILL; W. P. RICE; E. C. GLEASON;
 CLARA T. VEAZIE; H. E. BARRETT; A. A.
 HOLBROOK; ROMAN M. TISS; LEWIS A.
 LEINBAUGH; J. F. HOBBS; JOHN T.
 THORPE,

Plaintiffs

vs.

TWIN FALLS NORTH SIDE LAND AND WA-
 TER COMPANY, a Delaware Corporation, and
 THE CONTINENTAL AND COMMERCIAL
 TRUST AND SAVINGS BANK, a Corporation,
 Trustee,

Defendants

ROBERT ROGERSON, KENNETH McLEOD and
 BLAINE FURGERSON,

Intervenors

IN EQUITY NO. 544
DECREE

This cause came on to be heard at this term. That permission was given to the above named Interveners to file their bill in intervention and it was agreed that the material allegations of said bill in intervention were deemed denied by the plaintiff and defendants. Findings of fact and conclusions of law were expressly waived by all parties in open Court. That a stipulation of facts and of settlement of this case and providing for judgment thereon was entered into by the parties hereto and said stipulation presented to the Court and duly considered, whereupon, it was ordered, adjudged and decreed as follows:

I.

That the Construction Company shall complete its irrigation system in accordance with the terms and conditions of its existing contracts with the State of Idaho, (including the contract dated January 22, 1916, between the Bondholders Committee, so called, and said State) and when said system shall have been so completed and such completion shall have been duly certified by the Engineer of said State, as provided in said contracts, then and thereupon a full and complete compliance will have been affected as between the Construction Company and said State and the holders of contracts for the purchase of its water rights.

II.

That when its irrigation system shall have been so completed and shall have been finally accepted by the Board of Land Commissioners of said State, then and thereupon the Construction Company shall cause to be assigned to the North Side Canal Company, Limited, all of the right, title and interest in and to the Jackson Lake Reservoir, and to all storage water, therein (estimated at 315,000 acre feet), as embodied and set forth in that certain agreement between the United States of America and the Kuhn Irrigation and Canal Company, a Delaware Corporation, dated February 25, 1913, a copy of which is now on file in the office of said Board of Land Commissioners, and shall at once cause a proper assignment of said land mentioned agreement to be duly executed and placed in escrow in the Pacific National Bank of Boise, Idaho, to be delivered to said Canal Company, if and when the foregoing provisions of this paragraph shall have become effective.

III.

That the Construction Company may sell, and may keep sold as against any cancellations or foreclosures heretofore or hereafter effected, 170,000 shares in the capital stock of said Canal Company, (which shall represent the right upon the part of the holders or purchasers of such shares to irrigate 170,000 acres of land from the irrigation system

of the Construction Company), and may collect the purchase price therefor, upon the understanding, however, that the sales of such stock aggregating something more than 172,000 shares thereof, heretofore made by the Construction Company shall be adjudged within the limit above provided through the cancellation of sufficient of such shares which have heretofore come under its control, through foreclosure or otherwise.

IV.

That, if at any time in the future the Construction Company, its successors or assigns, shall conclude that the said irrigation system and the water supply therefor, will serve, or can be made to serve, without violating the settlers' contracts, more than 170,000 acres of land, and if the Construction Company is then unable to agree with said Canal Company as to what excess, if any, may be so served, then and in that event, and so often as such may be the case, the Construction Company, its successors or assigns, may bring an action in any court of competent jurisdiction to have said question judicially determined; and the question as to where the water must be measured to the contract holder under his contract with the Construction Company, and the question as to how much water must be so measured, thereunder for the purpose of determining what acreage may be irrigated above said 170,000 acres, are not covered or affected by this decree.

V.

That the several contracts between the State of Idaho and the Construction Company and said Bondholders Committee, and the various amendments to said contract, are now and shall be binding and of full force and effect as between all parties concerned therein, except as the invalidity of any such contract may be pleaded in defense of any suit brought against any individual, but no statement contained in said stipulation and agreement or this decree shall be taken in any such suit as evidence of non-performance by the Construction Company of any of its obligations, covenants or agreements set forth in its several contracts with the State of Idaho or with any contract holder.

VI.

Each party hereto shall pay his own costs.

Dated at Boise, Idaho, this 20th day of December, 1917.

FRANK S. DIETRICH,
District Judge

EXHIBIT "C"

Contract No. 152.

TWIN FALLS NORTH SIDE LAND AND
WATER COMPANY
AGREEMENT

THIS AGREEMENT, Made in duplicate this eighth day of July, 1907, between the Twin Falls

North Side Land and Water Company (for convenience hereinafter called "the Company"), a corporation organized and existing under the laws of the State of Delaware, party of the first part, and Fred Waite (for convenience hereinafter called "the purchaser") of Pocatello, State of Idaho, party of the second part, witnesseth:

That the Company has heretofore entered into a contract with the State of Idaho, acting by its State Board of Land Commissioners, whereby the Company bound itself to construct a system of canals and irrigation works for the reclamation and irrigation of certain lands therein described and referred to, which contract is of record in the office of the Register of the State Board of Land Commissioners at Boise City, Idaho.

That the Company has heretofore entered upon the work of construction of said irrigation system for the purpose of diverting from Snake River the waters thereof under the appropriation of the Twin Falls Land and Water Company by J. H. Lowell, Secretary, made October 11, 1900, recorded in Book 1 of Water Rights, at page 230, Lincoln County, Idaho, records, together with other water rights taken for use on the lands hereinafter described.

That the State Board of Land Commissioners, pursuant to law and its rules and regulations, has notified the Company that it may proceed to sell or contract rights to the use of water flowing and to flow through the canals, and rights to and in

said system of irrigation works, pursuant to law and to the terms of said contract with the State.

That the purchaser has made application to the Company to be permitted to purchase, upon the terms hereinafter set forth, the rights and privileges by said contract guaranteed, to the extent hereinafter named, which said application has been accepted by the Company subject to the approval of the State Board of Land Commissioners, whose approval, previous to the delivery hereof, has been by its Register endorsed hereon.

That in consideration of the sum of One Hundred Twenty & 00/100 Dollars, cash in hand paid this day by the purchaser to the Company and in consideration of the covenants and agreements hereinafter contained it is agreed that in pursuance of the contract between the Company and the State hereinafter called the State Contract that the purchaser shall become entitled to Forty (40) shares of the capital stock of the North Side Canal Company, Limited, the certificate thereof to be in the form as follows, to-wit:

NORTH SIDE CANAL COMPANY, LIMITED
40 Shares. July 8th, 1907

This is to certify Fred Waite, Pocatello, Idaho, is the owner of Forty (40) shares of the capital stock of the North Side Land Company, Limited.

This certificate entitles the owner thereof to receive one-eightieth of a cubic foot of water per

acre per second of time for the following described land: N. E. ¼ of the S. E. ¼—2-10-18, in accordance with the terms of the contract between the State of Idaho and the Twin Falls North Side Land and Water Company and this certificate also entitles the owner to a proportionate interest in the dam, canal, water rights and all other rights and franchises of the Twin Falls North Side Land and Water Company, based upon the number of shares finally sold, in accordance with the said contract between the said company and the State of Idaho.

.....
By.....
President

Attest:

.....
Secretary

Said certificate to be delivered as provided for in said State Contract and under the conditions therein stated.

The water which the purchaser shall have the right to conduct and receive through the said canal system shall be used upon and the water shall become dedicated and be appurtenant to the following described land and no other, to-wit:.....

.....
North East Quarter of the South East Quarter (NE. ¼-SE. ¼) in Section Two (2) of Township Ten (10) South of Range Eighteen (18) East,

containing Forty (40) acres in Lincoln County, Idaho.

And the parties hereto expressly agree as follows, to-wit:

1. This agreement is made in accordance with the provisions of said contract between the State of Idaho and the Company, which, together with the laws of the State of Idaho under which this agreement is made, shall be regarded as defining the rights of the respective parties. And shall regulate the provisions of the shares of stock to be issued to the purchaser by the North Side Canal Company, Limited.

2. The Company agrees that so long as it retains control of the North Side Canal Company, Limited, to-wit: so long as it shall continue to vote a majority of the stock of said Company, as provided by the State Contract, that it will cause said Company, to keep and maintain the said irrigation system in good order and condition and to cause any necessary repairs thereto to be made as soon as practicable and expedient.

Said North Side Canal Company, Limited, is to have power to levy all necessary tolls, charges and assessments upon all users of water in proportion to their respective holdings of stock, whether water is used or not and the Company hereby agrees that no charges shall be made for the delivery of water from this date until after the 1st day of January, 1909, and that thereafter the annual charge for

maintenance shall not, while the Company is in control of the said North Side Canal Company, Limited, exceed the sum of 35 cents for each and every acre to be charged against the entire acreage entered irrespective of the irrigation thereof. The purchaser agrees to pay said charges at the office of the North Side Canal Company, Limited, on the first day of April of each year without notice.

3. The consideration for the water rights hereby agreed to be conveyed is the sum of \$1200.00, and the balance thereof remaining due after the cash payment herein before acknowledged, to-wit: the sum of \$1080.00, is due and payable as follows, to-wit:

	Due	Prin- cipal	Inter- est	Amount
First Deferred Payment.....	April 1, 1909	\$ 80.00	\$64.80	\$144.80
Second Deferred Payment.....	" 1910	80.00	60.00	140.00
Third Deferred Payment.....	" 1911	80.00	55.20	135.20
Fourth Deferred Payment.....	" 1912	80.00	50.40	130.40
Fifth Deferred Payment.....	" 1913	120.00	45.10	165.10
Sifth Deferred Payment.....	" 1914	120.00	38.40	158.40
Seventh Deferred Payment.....	" 1915	160.00	31.20	191.20
Eighth Deferred Payment.....	" 1916	160.00	21.60	181.60
Ninth Deferred Payment.....	" 1917	200.00	12.00	212.00
Tenth Deferred Payment.....

Interest from April 1, 1908, at 6 per cent per annum shall be paid annually but if interest is not paid within thirty days from the date the same falls due then in such case it shall be computed for the entire period at the rate of eight per cent per annum.

4. The purchaser hereby covenants and agrees that upon default in the payment of any of the payments above specified, or of the interest thereon,

or any annual charge, toll or assessment, for the operation and maintenance of the irrigation system hereinbefore provided for, the Company may declare the entire amount of the principal purchase price for said water right due, and may proceed either in law or equity to collect the same, and to enforce any lien which it may have upon the water rights hereby contracted, or upon the lands to which said water rights are dedicated or may at its option proceed to enforce any remedy given by the laws of Idaho to the Company against the purchaser.

And the purchaser hereby further covenants that he will and by these presents does hereby assign, transfer and set over by way of mortgage or pledge to the Company to secure the payments of the amounts due and to become due on the purchase price of the water right hereby contracted to be sold and all interest, tolls and charges herein provided for, any and all rights which he now has or which may hereafter accrue to him under his contract with the State of Idaho, for the purchase of the lands to which the water rights hereby contracted for are dedicated, and further that immediately upon transfer to him of the legal title to said lands or any part thereof, he will, upon demand, execute to the Company, in proper form, a mortgage or deed of trust with power of sale in such form as may be approved by the State Board of Land Commissioners to secure the performance by him of the provisions of this contract, which said mortgage the purchaser

hereby covenants and agrees shall be a first lien upon the lands so mortgaged, superior to any land every incumbrance in favor of any persons whomsoever.

5. The purchaser agrees that the shares of stock purchased in the North Side Canal Company, shall be and they are hereby assigned and transferred to the Company and said Company and its agents are hereby authorized and empowered to vote said stock in such manner as it or its agents may deem proper at all meetings of the stockholders of said Company until 35 per cent of the purchase price of said stock has been paid.

6. It is agreed that no water shall be delivered to the purchaser from said irrigation system while any installment of principal or interest is due and unpaid from the purchaser to the Company or while any toll or assessment is due and unpaid from the purchaser to the North Side Canal Company, Limited.

7. This contract may be assigned by the Company and thereupon the payment of principal and interest if so provided shall be due and payable to the assignee but the payment for tolls, assessments and charges for the delivery of water shall, unless otherwise provided, be paid to the North Side Canal Company, Limited, and payment thereof may be enforced by it.

8. This contract is made pursuant to and subject to the Contract between the Company and the

State of Idaho and the existing laws of said State.

9. All notices given to second party by the State Board of Land Commissioners or by the first party hereto may be sent to second party by mail addressed to Pocatello, Idaho.

IN WITNESS WHEREOF, The parties have hereunto subscribed their names, and the Company has caused its seal to be affixed the day and year above written in duplicate.

TWIN FALLS NORTH SIDE LAND AND
WATER COMPANY,

By D. C. MACWATTERS,

Vice-President

FENTRESS HICE,

Ass't. Secretary

(SEAL)

FRED WAITE.

I hereby certify that the above is a true copy of the original contract in the above matter.

Attest: FENTRESS HICE.

C. M. HAPGOOD, *Ass't. Secy. Twin Falls North
Side Land & Water Co.*

E. C. KIERSTED,

Witnesses.

The foregoing contract is hereby approved, and has been registered this 30th day of July, 1907.

STATE BOARD OF LAND COMMISSINERS,

By M. I. CHURCH,

Register

For value received this contract, principal and interest, is hereby assigned and transferred to, by authority of a resolution of the Board of Directors of the Twin Falls North Side Land and Water Company.

TWIN FALLS NORTH SIDE LAND AND WATER CO.,

By.....

EXHIBIT "D"

Incorporated Under the Laws of the State of Idaho. No. 243. 40.00 Shares

NORTH SIDE CANAL COMPANY Limited

CAPITAL STOCK \$200,000.00

Par Value of Shares, One Dollar.

Principal Place of Business, Jerome, Idaho.

Jerome, Idaho, Oct. 10, 1914

THIS IS TO CERTIFY That D. L. McClung is the owner of Forty and no/100 (40.00) Shares of the Capital Stock of the North Side Canal Company, Limited. This CERTIFICATE entitles the owner thereof to receive one-eightieth of a cubic foot of water per acre per second of time for the following described land: North-East Quarter of the South-East Quarter, (NE1/4 SE1/4), Sec. Two (2), Twp. Ten (10) S., of R. Eighteen (18) East B. M., in accordance with the terms of the contract between the State of Idaho and the Twin Falls North Side Land and Water Company.

AND THIS CERTIFICATE Also entitles the owner to a proportionate interest in the dam, canal, water rights and all other rights and franchises of the Twin Falls North Side Land and Water Company, based upon the number of shares finally sold, in accordance with the said contract between the said Company and the State of Idaho.

IN WITNESS WHEREOF, The said Corporation has caused its corporate name and seal to be hereto affixed.

NORTH SIDE CANAL COMPANY, Limited.

By D. C. MACWATTERS,

(SEAL)

President

Attest: HARVEY W. HURLEBAUS,

Secretary

(Service acknowledged Dec. 2, 1927,

by E. A. Walters.)

(Title of Court and Cause.)

OBJECTION TO APPLICATION FOR PERMISSION TO FILE SUPPLEMENTAL BILL IN INTERVENTION.

COME now the defendants in the above entitled case and oppose the motion of D. L. McClung for permission to file a supplemental bill in intervention in the above entitled case, and moved the Court for an Order denying the said McClung permission to file said supplemental bill, all upon the following grounds and for the following reasons:

1. That the Court has no jurisdiction over the matters and things sought to be litigated in the proposed supplemental bill in intervention for the reason that,

(a) Final Judgment was entered in this action almost ten years prior to the filing of said McClung's motion and no jurisdiction of the case was retained by the Court in the final judgment entered in this cause, and

(b) The proposed supplemental bill in intervention reveals on its face that it presents to the Court a different cause of action from that set forth in the original complaint herein or in the bill in intervention heretofore filed herein, and a cause of action involving different parties from those who were parties to the original bill of complaint herein and/or original bill of intervention, and

(c) That said McClung was not a party to, and is not a successor in interest of any party to, the said original action.

2. That the identical question sought to be litigated by the intervenor McClung if his proposed supplemental bill in intervention is allowed to be filed herein, is at present being litigated in another action which is pending in the District Court of the

Eleventh Judicial District of the State of Idaho, in and for the County of Jerome, wherein the said D. L. McClung is plaintiff and the defendant herein, the Twin Falls North Side Land & Water Company, a corporation, is defendant, together with other defendants, and in which action, the sole relief sought is to prevent the defendant here, the Twin Falls North Side Land & Water Company, from selling shares of stock and/or water rights in the North Side Canal Company, Limited, in excess of 170,000 acres; that said action in said State District Court is at issue and stands ready for trial upon the docket of said District Court and is at the present time, and was at the time of the filing of the said McClung's motion, pending there, undetermined, and that the said proposed supplemental bill in intervention is merely a duplication of the complaint filed in said State Court and can only present for trial the same issues already presented in said action in said State Court and can and will only result in a multiplicity of suits over the same subject matter.

3. That the relief sought by the proposed supplemental bill in intervention is not germane to the original bill of complaint in this action or the original bill in intervention in this action or either of them; and that it is not supplemental thereto nor designed to cure some oversight or change in situation, but is an attempt to inject into, and litigate, an entirely new, separate and different cause of

action from that presented by the original bill of complaint and/or the original bill in intervention herein.

4. That the matter actually sought to be presented to the Court by the proposed supplemental bill is not fully or fairly stated in the proposed bill; that as a matter of truth and fact the former decree in this action, after fixing the limit of water stock or water rights to be sold by the defendant on the North Side Project at 170,000 shares or acres, continued with the following language:

“That, if at any time in the future the Construction Company, its successors or assigns, shall conclude that the said irrigation system and the water supply therefor, will serve, or can be made to serve, without *viliating* the settlers’ contracts, more than 170,000 acres of land, and if the Construction Company is then unable to agree with said Canal Company as to what excess, if any, may be so served, then and in that event, and so often as such may be the case, the Construction Company, its successors or assigns, may bring an action in any Court of competent jurisdiction to have said question judicially determined; and the question as to where the water must be measured to the contract holder under his *contract* with the Construction Company, and the question as to how much water must be so measured, thereunder for the purpose of determining what acreage

may be irrigated above said 170,000 acres, are not covered or affected by this decree."

That pursuant to the express language of said portion of said decree above quoted, the defendant herein, (which is the company referred to as the "Construction Company" in the said decree) entered into an agreement with the North Side Canal Company, Limited, (which is the Company referred to as the "Canal Company" in said decree) after the said Canal Company had been expressly authorized so to do by a vote of its stockholders, including the said McClung and his alleged class, entered into an agreement in writing wherein and whereby it was mutually agreed that the limit of 170,000 shares or acres of water rights fixed by the said former decree in this action, should be changed or altered pursuant to the specific terms of said decree and a new limit of 185,000 acres was fixed.

That the defendant Twin Falls North Side Land & Water Company, herein has not sold, and it is not alleged in the proposed supplemental bill in intervention that it has sold, any water rights in excess of the said figure of 185,000 shares or acres, as fixed in said agreement; and that the said McClung knows, and by his proposed supplemental complaint in intervention is concealing from the Court, the fact that defendant has not violated said former decree as altered by the parties by the agreement aforesaid, and that the only question sought to be presented now is the validity of the said written

agreement made pursuant to said former decree, which is a question entirely foreign to and different from, any question presented in the original bill of complaint herein, or in the original complaint in intervention herein.

5. That the North Side Canal Company, Limited, an Idaho corporation, the State of Idaho, and the Twin Falls North Side Land & Water Company are parties to said settlement agreement and that the said North Side Canal Company, Limited, and the said State of Idaho are necessary parties in any litigation concerning the same.

6. That if the validity of said settlement agreement is to be litigated, said North Side Canal Company, Limited, and the State of Idaho will necessarily be parties defendant to the proposed supplemental bill and that when they are so joined, there will not be a diversity of citizenship between the plaintiff and the necessary defendants and that, therefore, this Court has not jurisdiction of the controversy sought to be presented by the said supplemental bill.

That this objection and motion is made upon all of the records and files of this action and the affidavit of E. A. Walters, with the exhibits thereto attached, which is attached to this objection and by reference made a part hereof.

DATED this 19th day of December, 1927.

WALTERS AND PARRY,
Attorneys for the Defendants

*In the District Court of the United States for the
District of Idaho, Southern Division.*

OLIVER HILL; W. P. RICE; E. C. GLEASON;
CLARA T. VEAZIE; H. E. BARRETT; A. A.
HOLBROOK; ROMAN M. TISS; LEWIS A.
LEINBAUGH; J. F. HOBBS; JOHN T.
THORPE,

Plaintiffs

vs.

TWIN FALLS NORTH SIDE LAND AND WA-
TER COMPANY, a Delaware Corporation, and
THE CONTINENTAL AND COMMERCIAL
TRUST AND SAVINGS BANK, a Corporation,
Trustee,

Defendants

ROBERT ROGERSON, KENNETH McLEOD and
BLAINE FURGERSON,

Intervenors

AFFIDAVIT OF E. A. WALTERS

STATE OF IDAHO,)
) ss.
County of Twin Falls,)

E. A. WALTERS, being first duly sworn, deposes
and says:

That he is one of the attorneys for the defendant
herein and has been at all times since the inception
of this action, and that during such time, he has
been one of the attorneys for the defendant Twin
Falls North Side Land & Water Company, a corpo-
ration; that on or about the 8th day of November,

1921, there was filed in the District Court of the Eleventh Judicial District of the State of Idaho, in and for the County of Jerome, an action by D. L. McClung as plaintiff, being the same person as the D. L. McClung who now asks leave to file a supplemental bill in intervention in this action; the defendants therein being the defendant in this action, The North Side Canal Company, Limited, an Idaho Corporation, and the State of Idaho and certain of the officials of said State; that a true and correct copy of the complaint in said action with exhibits attached thereto is hereto attached marked "Exhibit A" and by reference made a part hereof; and that a true and correct copy of the answer filed in said action is hereto attached marked "Exhibit B" and by reference made a part hereof.

That said action stands at issue and ready for trial upon the docket of the said last above mentioned State Court and is pending there undetermined at the present time.

E. A. WALTERS.

SUBSCRIBED AND SWORN to before me this 19th day of December, 1927.

MAY COOK,

(SEAL)

Notary Public, residing at
Twin Falls, Idaho.

(Original exhibits that were attached are forwarded.)

Endorsed: Filed Dec. 20, 1927.

W. D. McREYNOLDS, Clerk.

By M. Franklin, Deputy.

(Title of Court and Cause)

MEMORANDUM DECISION

Feb. 6, 1928.

J. B. Eldridge, Attorney for Supplemental Complainant, D. L. McClung.

Walters & Parry, Attorneys for Defendants.

CAVANAHA, DISTRICT JUDGE:

During the years 1901, 1907 and 1908, the State of Idaho, in pursuance of an Act of Congress commonly known as the Carey Act, and the laws of the State, acting through its proper officials, entered into certain contracts wherein it agreed to procure the construction of a certain irrigation system to divert the waters of the Snake River sufficient to irrigate and reclaim more than 200,000 acres of land, which included the lands of the plaintiffs and the supplemental complainant D. L. McClung, and in what is known as the North Side Project. Thereafter, in accordance with the contracts, the State entered into certain other contracts with the defendant Twin Falls North Side Land & Water Company, providing for the construction by the defendant company of the irrigation works and the initiation of water rights for the reclamation of the lands. The defendant company, acting in accordance with the Act of Congress and the laws of the State, and its contracts with the State, contracted with certain

settlers desiring to enter lands within the North Side Project, wherein it agreed to sell to the entrymen an interest in the irrigation works and the water rights to be diverted by the system.

In 1917, in an action brought in this court by the same plaintiffs against the defendants, a decree by stipulation was entered, relating, among other things, to the selling of a number of shares of stock in the defendant company, and it was therein provided that if at any time in the future the company shall conclude that the irrigation system and its water supply will serve and can be made to serve, without violating the settlers' contracts, more than 170,000 acres of land, and it is unable to agree with the Canal Company, in which the supplemental complainant is a shareholder, as to what excess over the 170,000 acres may be served, then the defendant company may bring an action in any court of competent jurisdiction to have the question determined.

After the decree was rendered, and in the year 1921, the question arose as to whether the defendant company could sell 185,000 shares of the capital stock of the Canal Company which represented its right to sell water rights for the irrigation of 185,000 acres of land and which was 15,000 shares of stock in addition to the 170,000 then sold and outstanding. The North Side Canal Company, representing its stockholders, of which the supplemental complainant is one, the State of Idaho, and the defendant company, then entered into a contract

in which they recited the provision of the Court's decree relating to the manner of determining the sale of the stock for water in excess of the 170,000 acres of land, and therein agreed that the irrigation system and the then water supply was sufficient to irrigate and reclaim 185,000 acres of land without violating the terms of the settlers' contracts. The right was there given to the defendant company to sell and keep sold 185,000 shares of the capital stock of the Canal Company. So the provision of the decree in the original action in that respect was complied with when the parties interested agreed to allow the company to sell and dispose of the 15,000 shares of stock in addition to the stock then sold and outstanding. After this agreement was made the supplemental complainant McClung instituted an action in the State Court against the defendant company and others, which is pending and is at issue, and in which the same issue is involved as to the right of the defendant company to sell the additional 15,000 shares of stock under the decree of the Court. Apparently not being content with the action pending in the State Court, he now moves this Court for an order permitting him to file his supplemental bill of complaint in the original action in which the decree in question was rendered, and tenders a supplemental bill praying for an order restraining the defendant company from selling any further water rights out of the water supply available at the time the decree was

entered, and requiring the completion of the irrigation system.

The defendants objected to the application for permission to file a supplemental bill, and urges that the Court has no jurisdiction over the matters sought to be litigated in the proposed supplemental bill, for the reason that a final judgment was rendered in this action ten years ago, and no jurisdiction of the case was retained by the court in the final judgment; that the proposed supplemental bill reveals that it presents a different cause of action from that set forth in the original complaint, and a cause of action involving different parties from those who were parties to the original complaint, and that McClung was not a party to and is not a successor in interest of any party to the original action. Attached to the objection of the defendants is the affidavit of their counsel, stating that the action referred to is now pending in the State Court, and that the exhibits attached thereto, containing copies of the various contracts, the decree in the final action and the pleadings, with its exhibits, are true and correct. Upon the other hand, the supplemental complainant contends that his application is for the purpose of carrying into execution the decree of this court rendered in the original suit, and that the Court has not relinquished jurisdiction in its enforcement. It would seem from an examination of the decree of the court in the original action that the court retained jurisdiction in carrying out the

decree in the event the parties could not agree upon allowing defendant company to sell and dispose of water rights in excess of 170,000 shares, by authorizing the institution of an action to determine such right in any court of competent jurisdiction which would permit such an action to be brought. This permission is expressly stated in the decree, but the record upon this motion contains an agreement made by the proper parties, in which they agreed that the defendant company could sell the additional 15,000 shares of its stock, and further agreed that there was then a sufficient supply of water to meet the requirements of the total 185,000 shares of stock, and that the Canal Company could adequately divert it. By entering into this agreement they took the steps prescribed in the decree, and thereby removed the necessity of bringing an action in this Court to determine the question involved here. It will be remembered that the agreement upon which the original decree is based, and the decree itself, recognizes that at the time the decree was rendered on December 20, 1917, the canal system was not complete, and the limitation of 170,000 acres, stated in the decree, was the acreage of water rights sold at that time, and the reason for inserting in the agreement and the decree the clause referred to was to allow the Land & Water Company, when it increased the capacity of the irrigation system, to sell and dispose of stock in excess of 170,000 shares then out-

standing in such amount as would meet the increased capacity and water supply.

The intent and purpose of the proposed bill in intervention is to present for determination the right of the defendant company to sell an additional 15,000 shares of stock and to attempt to divert the water through the canal system, which it is claimed is inadequate and incomplete. There is no dispute as to the execution of the agreement referred to. It would seem that at the present time there is no question under the decree to be adjudicated, as the parties have agreed in the manner directed in the decree. The court in rendering its decree in the original suit authorized the parties to determine the request of the defendant company for the right to sell and dispose of the additional shares of stock in one of two ways: First by agreement of the parties, and second, in case they are unable to agree, an action may be brought in any court of competent jurisdiction. The North Side Canal Company, representing its stockholders, among whom was the supplemental complainant McClung, and his predecessor in interest, complied with the decree by entering into the agreement allowing the defendant company to sell the additional 15,000 shares of stock in question, and asserted therein that there was a sufficient water supply and that the canal system was adequate to divert it.

The further request in the proposed bill that the defendant company be required to complete the irri-

gation system is answered by the provisions in the decree and the agreement of the parties, entered into in July, 1921. It is provided in the decree "that the Construction Company shall complete its irrigation system in accordance with the terms and conditions of its existing contracts with the State of Idaho, (including the contract dated January 22, 1916, between the Bondholders' Committee, so called, and said State) and when said system shall have been so completed, and such completion shall have been duly certified by the Engineer of said State, as provided in said contracts, then and thereupon a full and complete compliance will have been effected as between the Construction Company and said State and as between the Construction Company and the holders of contracts for the purchase of its water rights." And in the agreement it is provided that "since the date of said decree, the capacity of said canal system and its efficiency have been greatly increased, a considerable portion of which work was not required by said State contracts, but was performed by the Land and Water Company without contract requirement for the purpose of making it possible to increase the area that could be reclaimed, and to the end that the Land and Water Company might sell and keep sold more than 170,000 shares of the capital stock of the Canal Company as provided in said paragraph four of said decree * * * : and, whereas, said work of canal enlargement and improvement has been completed, including an in-

creased right in the Milner Diversion Dam, by means of which about 500 second feet of additional water can now be diverted into said canal system; and, whereas, it has been determined and ascertained by the parties hereto, and so agreed, that said irrigation system and the present water supply therefor can, without violating the terms or provisions of the settlers' contracts, irrigate 185,000 acres of land."

It will be observed that the decree provides that the defendant company, who was designated in the decree as the "construction company," shall complete its irrigation system in accordance with the terms and conditions of its existing contracts with the State and others, and when the completion of the system shall have been certified by the Engineer of the State, as provided in the contracts, then a full and complete compliance will have been effected as between it and the State and the holders of contracts for the purchase of water rights. The Court in the decree has said that when the certification of the State Engineer is made as to the completion of the system, a full and complete compliance with the contracts will have been effected. This requirement of the decree was recognized and admitted by the parties, as we find in the clause quoted from the agreement the statement that since the decree the capacity of the canal system and its efficiency have been greatly increased to such an extent that the Land and Water Company might sell and keep sold

more than 170,000 shares of stock of the Canal Company as provided in the decree; that the work of canal enlargement and improvement has been completed to the extent that about 500 second feet of additional water can be diverted into the canal system, and that it had then been determined and ascertained by the parties, and so agreed, that the system, and the present water supply therefor, can, without violating the terms of the settlers' contracts, irrigate and reclaim 185,000 acres of land. It further appears that the system was, on August 6, 1920, accepted as completed according to the contract, by the State and for and on behalf of the North Side Canal Company.

The controversy between supplemental complainant McClung, a stockholder of the North Side Canal Company, the defendant company, and the State, as to whether or not the agreement of July 27, 1921, referred to, was fraudulent or unwise, has no relation and is not germane to the original bill and decree, for if a stockholder feels that his company has jeopardized his rights in entering into the agreement in question, he can avail himself of the remedy provided by law in a proper action, and bring in all of the parties to the contract.

It follows from the conclusion here reached that the motion for permission to file the proposed bill is denied.

Endorsed: Filed Feb. 6, 1928.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause)

ORDER DENYING APPLICATION TO FILE
SUPPLEMENTAL BILL OF COMPLAINT.

Upon consideration, and in harmony with Memorandum Decision this day filed,

IT IS ORDERED, that the motion for permission to file proposed supplemental bill of complaint be and the same is hereby denied, without prejudice.

Dated: Boise, Idaho, February 6, 1928.

(Signed) CHARLES C. CAVANAH,
District Judge

Endorsed: Filed Feb. 6, 1928.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause)

NOTICE OF MOTION

The above named defendants and to the intervenors and to E. A. Walters, Esq., and to E. M. Wolfe, Esq., their attorneys of record.

You and each of you will please take notice that the supplemental complainant, D. L. McClung, will move the court at the court-room of the Federal Building in Boise, Idaho, on the 11th day of September, 1928, at the hour of 10:00 o'clock a. m. of said day, or as soon thereafter as counsel may be heard, to make an order permitting the supplemental complainant, D. L. McClung, to file his supplemental complaint, herein copy of which is at-

tached to the motion, motion and copy of supplemental complaint being hereto attached and made a part thereof.

That said motion will be made upon the supplemental bill of complaint of D. L. McClung and upon the original pleadings, papers, records and files in said cause.

J. B. ELDRIDGE,
Attorney for Supplemental
Complainant, D. L. McClung,
Residence, Boise, Idaho.

Endorsed: Filed August 29, 1928.

W. D. McREYNOLDS, Clerk.

By M. Franklin, Deputy.

(Title of Court and Cause)

MOTION

Comes now the supplemental complainant, D. L. McClung, and moves the Court for an order permitting the supplemental complainant to file his supplemental bill of complaint for the reasons and upon the grounds set forth in said supplemental bill of complaint, copy of which is hereto attached and made a part hereof.

J. B. ELDRIDGE,
Attorney for Supplemental
Complainant, D. L. McClung,
Residence, Boise, Idaho.

Endorsed: Filed Dec. 7, 1927.

W. D. McREYNOLDS, Clerk.

By Verna Thayer, Deputy.

(Title of Court and Cause)

SUPPLEMENTAL BILL IN EQUITY

COMES NOW D. L. McCLUNG and for SUPPLEMENTAL BILL IN EQUITY alleges and states:

I.

That on the 13th day of April, 1916, Oliver Hill and others filed their Amended Bill of Complaint in said cause, to which reference is hereby made and by such reference made a part hereof.

II.

That on December 20, 1917, pursuant to motion theretofore made, Robert Rogerson and others filed their Bill of Intervention in said cause December 20, 1917, to which reference is hereby made and by such reference made a part hereof.

III.

That on December 20, 1917, Stipulation between all said litigants was filed for decree, copy of which marked EXHIBIT "A" is hereto attached and made a part hereof.

IV.

That decree was entered on December 20, 1917, in said cause, copy of which marked EXHIBIT "B" is hereto attached and made a part hereof.

V.

That your complainant herein was at the time of the filing of the original and said Amended Bill and Bill in Intervention, Stipulation and Decree, and is now the owner of the following described land, to-wit: The Northeast quarter of the Southeast quarter and the Southeast quarter of the Northeast quarter of Section Two, Township Ten South, Range 18 East, Boise Meridian, Jerome County, State of Idaho, situate upon and as a part of Northside Irrigation Project and the owner of the right to receive one-eightieth second foot for each acre of land under what is known as first segregation contract as set forth in said Amended Bill and was one of the parties on whose behalf said cause was prosecuted and maintained, and on whose behalf said stipulation was signed and on whose behalf said decree was rendered.

VI.

That on or about the months of April and July, 1907, respectively, one Fred Waite, the predecessor in interest of your supplemental complainant, entered into his certain water right contracts with Twin Falls North Side Land and Water Company,

said contracts being of the same kind and character as the settlers' contracts set forth and described in the Amended Bill and the Bill in Intervention in this cause wherein and whereby a water right was acquired for the lands belonging to this supplemental complainant described as aforesaid:

That subsequently stock certificates in North Side Canal Company were issued to supplemental complainant herein, copies of one of said contracts and certificates marked EXHIBITS "C" and "D" are hereto attached and made a part hereof, said contract and stock certificate being of the same character and import as issued to all settlers under said project.

VII.

That your supplemental complainant has performed all the obligations on his part to be performed under said contracts and hereby offers to do equity and to subject himself to the equitable consideration of the court.

VIII.

That under the terms of said decree the United States District Court for the District of Idaho adjudged and decreed that the several contracts set forth in the Bill of Complaint and their amendments shall remain in full force and effect between all parties concerned therein; that your supplemental complaint is deeply interested in said contracts.

IX.

That said Court adjudged and decreed that the construction company had the right to sell and keep sold 170,000 shares of stock carrying with it the right to irrigate 170,000 acres and no more, and that no other further shares of stock should be sold if by so doing the settlers' contracts would be violated.

X.

That Twin Falls North Side Land and Water Company has made no attempt until within approximately the last few months to sell or dispose of stock in North Side Canal Company, Ltd., in excess of 170,000 shares and has within said time offered for sale and is now offering for sale, and unless restrained and enjoined by order of this Court, will sell stock in excess of 170,000 shares which shares will entitle land in excess of 170,000 acres to receive water for irrigation out of the present water supply of the North Side Canal Company to the injury of complainant and in violation of his contract with said Twin Falls North Side Land and Water Company, then and now in force and in violation of said decree; that the present available water supply furnished by said Land and Water Company for said North Side Canal Company is insufficient to supply the amounts already contracted to be furnished to settlers; that the present capacity of the irrigation system furnished by said Land and Water Company

for said North Side Canal Company is not sufficient to permit of the delivery of the amounts already contracted to be delivered to settlers by said Land and Water Company; that the dependable operating capacity of the system is not more than 3360 second feet and there is a water loss of 40 per cent of making deliveries through said system; and that 3360 second feet of water if available in the system will only furnish and deliver the contract amounts of water to 163,080 acres under said State and settlers' contracts now outstanding.

XI.

That said Twin Falls North Side Land & Water Company, defendant herein, is offering to sell 15,000 shares of stock more representing water for use on 15,000 acres additional lands to be irrigated from the said water supply, and to be irrigated from the canal system belonging to the lands of the North Side Project as aforesaid, which are wholly and notoriously inadequate to furnish water, therefore, in that said system has never been completed in conformity with said decree and that further sale of additional shares of stock and water rights to additional lands as is now proposed and threatened by defendant, Twin Falls North Side Land and Water Company as aforesaid, and in violation of said decree, will cause great and irreparable injury to your Supplemental Complainant posed and threatened by defendant, Twin Falls North Side Land and

Water Company as aforesaid, and in violation of said decree, will cause great and irreparable injury to your Supplemental Complainant and all others similarly situated.

XII.

That there are a large number of water users holding contracts similar to that of your supplemental complainant herein, and on account of the vast numbers interested as your complainant is interested, it would be impracticable to bring them all before the Court and your supplemental complainant brings this supplemental proceeding on behalf of himself and all such persons similarly situated, on whose behalf the Bill in Intervention herein was prosecuted, and decree entered thereon.

That your supplemental complainant and others similarly situated have no plain, speedy and adequate remedy at law.

XIII.

That your supplemental complainant brings this action in aid of said former decree rendered by this court and for the enforcement thereof, and to render said decree operative and effective.

XIV.

That your supplemental complainant and those on whose behalf this action is brought are citizens and residents of the State of Idaho.

XV.

That, for the purpose of avoiding and violating the decree of this court as aforesaid and to avoid the completion of said irrigation works as provided for in said decree, said Twin Falls North Side Land & Water Company wrongfully and unlawfully and fraudulently combined and conspired with W. G. Swendsen, Commissioner of Reclamation of the Department of Reclamation of the State of Idaho wherein and whereby the said W. G. Swendsen wrongfully, fraudulently and in violation of the rights of this supplemental complainant and those similarly situated entered a certain order and finding on the 6th day of August, 1920, copy of which is marked Exhibit "E" and is hereto attached and made a part hereof wherein and whereby the said commissioner of reclamation wrongfully and fraudulently and acting beyond the scope of his authority found and determined that the said irrigation system had been completed and pretended to accept the same so as to bind the stockholders of the North Side Canal Company, including the supplemental complainant herein.

XVI.

That in pursuance of said fraudulent conspiracy to cheat and defraud your supplemental complainant and those similarly situated of their rights to the use of water for which they had bought and paid as aforesaid, said defendant, Twin Falls North

Side Land & Water Company wrongfully and unlawfully combined and conspired with North Side Canal Company and said W. G. Swendsen to violate the terms of the decree of this court as aforesaid, and to that end and for the purpose entered into that certain contract bearing date of the 27th day of July, 1921, a copy of which marked Exhibit "F" is hereto attached and made a part hereof; wherein and whereby said Twin Falls North Side Land & Water Company and said North Side Canal Company, Limited, being then and there under the management and control of R. E. Shepherd, general manager for both said companies, falsely and fraudulently recited in said contract that said irrigation works had been completed and enlarged so that "without violating the provisions of the settlers' contracts" said irrigation works would reclaim 185,000 acres of land and contracted and agreed that 15,000 additional shares of the capital stock of said canal company might be sold representing a water right for 15,000 additional acres of land and falsely and fraudulently recited and provided in said contract that the sale of additional shares as aforesaid shall not be deemed in violation of the provisions of the contracts between the Land & Water Company and the State of Idaho but in compliance therewith; and falsely and fraudulently recited and provided in said contract that said contract should be deemed and considered in compliance with the decree of this court as aforesaid; and false-

ly and fraudulently attempted to stipulate in this suit under and by means of said contract, that said agreement may be deemed

“a stipulation by and between the parties in said suit for the amendment of said decree as herein recited in so far as applicable.”

thereby fraudulently attempting to force this supplemental complainant and those similarly situated into a stipulation in this cause without their knowledge and consent, that the decree of this Court may be deemed amended so as to permit the sale of 15,000 additional shares of stock for 15,000 additional acres of land.

XVII.

That said W. G. Swendsen attempted to bind the State of Idaho and pretended to cause the State of Idaho to agree to the execution of said contract, all of which was in violation of his authority and beyond the scope thereof.

XVIII.

That all of said acts and doings were false and fraudulent and known to be such by said defendants and by said North Side Canal Company, Limited, and said W. G. Swendsen for the reasons hereinbefore stated.

XIX.

That the North Side Canal Company, Limited, of which your supplemental complainant and those

similarly situated are stockholders, is and was without authority to authorize the sale of additional water for the reason of the insufficient supply thereof as aforesaid, and insufficient capacity for in so doing, the water rights or right to the use of water purchased and paid for by your supplemental complainant and those similarly situated, would have to be taken from them and is being taken from them, to the end that said waters may be sold to additional lands as provided for in said contract as aforesaid, Exhibit "F," hereto attached.

XX.

That under the terms of the decree of this Court as aforesaid it was provided, that the said State contracts for the first segregation shall remain in full force and effect and be binding; and that a further sale of water rights as agreed upon as a result of said conspiracy and in pursuance thereof as aforesaid will violate the said State contracts and the settlers' contracts, including that of supplemental complainant and those on whose behalf this action is brought, in that section 8 of the State contract provides:

"But in no case shall water rights or shares be dedicated to any lands aforementioned or sold beyond the carrying capacity of the canal or in excess of the appropriation of water therefor."

XXI.

That supplemental complainant herein and those on whose behalf this action is brought, has never consented to the further sales of water rights as aforesaid but has at all times protested against the sale of any further water rights.

XXII.

That said contract permitting the further sale of water rights from the water supply available for said North Side Project is void for the further reason that said North Side Canal Company is without power or authority to agree to the further sale of water rights for the reason that no water is available for said lands to be supplied, and that said water has already been sold to and paid for by supplemental complainant and those on whose behalf this action is brought, and belonged to them at the time said contract was made and now belongs to them.

XXIII.

That within a very few months after said contract was entered into for the further sale of said water rights on said project, said conspirators in order to pacify the water users upon said North Side Project engaged in a speech making campaign over said project advising the settlers upon said project to purchase approximately one hundred and sixty thousand acre feet of water for use upon the

lands of said North Side Project as a supplemental water supply, on account of the extreme shortage of water upon said project, and the dire necessity for an added water supply for the lands already under irrigation at said time and at the time of the entering into said wrongful and unlawful contract as aforesaid from American Falls water supply and said additional supplemental water supply was so purchased.

WHEREFORE supplemental complainant prays:

First.

That an order of this court be issued permitting supplemental complainant to file his supplemental bill herein.

Second.

That defendant, Twin Falls North Side Land and Water Company be restrained and enjoined permanently from the sale of any further water rights to be supplied under said State and settlers' contracts, out of the water supply available at the time said decree was entered and restrained and enjoined from the sale of any further water or water to be carried through said canal as now constructed.

Third.

That Twin Falls North Side Land and Water Company be required to complete said irrigation system in conformity with said contracts.

Fourth.

That if the Court shall find it expedient and necessary, that the court appoint a party to take charge of said irrigation works and complete the same at the expense of said Twin Falls North Side Land and Water Company, so as to make possible the delivery of the contracted amounts of water for 170,000 acres to the end that the settlers' contracts shall not be violated.

Fifth.

That if it be deemed necessary for the bringing in of North Side Canal Company, Limited, a corporation, then an order to that effect be entered and said North Side Canal Company, Limited, be made a party defendant herein and that an order for process and service be issued accordingly.

Sixth.

That your supplemental complainant and those similarly situated have such other and further relief as to the Court may appear just in the premises.

J. B. ELDRIDGE,
Attorney for Supplemental Complainant.
Residence, Boise, State of Idaho.

STATE OF IDAHO)
) SS.
County of Jerome,)

D. L. McClung being first duly sworn deposes and says: That he is the supplemental complainant in

the above entitled cause and has read the within and foregoing supplemental bill of complaint and known the contents thereof, that he believes the facts stated in the pleadings to be true.

D. L. McCLUNG.

Subscribed and sworn to before me this the 7th day of May, 1928.

JAMES C. KNOTT,

Notary Public.

(SEAL)

Residing at Eden, Idaho.

My commission expires Sept. 8, 1931.

(Title of Court and Cause)

IN EQUITY

No. 544.

STIPULATION SETTLING CASE AND FOR
JUDGMENT.

For the purpose of effecting a complete and final settlement of the above entitled action, and of all the issues and differences set forth or involved therein, it is hereby stipulated and agreed by and between the plaintiffs above named, acting for themselves and for all other persons and associations who have contributed funds for the prosecution of this cause, or have otherwise assisted in such prosecution, and for all who are in privity with said plaintiffs and for all who may lawfully be bound by the acts of said plaintiffs herein (said plaintiffs and all others such persons or association being herein-

after called the parties of the first part) and the Twin Falls North Side Land and Water Company, one of the defendants above named, (hereinafter called the Construction Company), as follows: viz:

1. The Construction Company will complete its irrigation system in accordance with the terms and conditions of its existing contracts with the State of Idaho, (including the contract dated January 22, 1916, between the Bondholders' Committee so called, and said State) and when said system shall have been so completed, and such completion shall have been duly certified by the Engineer of said State as provided in said contracts, then and thereupon a full and complete compliance will have been effected as between the Construction Company and said State and as between the Construction Company and the holders of contracts for purchase of its water rights.

2. When its irrigation system shall have been so completed and shall have been accepted by the Board of Land Commissioners of said State then and thereupon the Construction Company will cause to be assigned to the North Side Canal Company, Limited, all of the right, title and interest in and to the Jackson Lake Reservoir, and to all storage water therein (estimated at 315,000 acre feet), as embodied and set forth in that certain agreement between the United States of America and the Kuhn Irrigation and Canal Company, a Delaware corporation, dated February 25, 1913, a copy of which is now on file

in the office of said Board of Land Commissioners, and will at once cause a proper assignment of said last mentioned agreement to be duly executed and placed in escrow in the Pacific National Bank of Boise, Idaho, to be delivered to said Canal Company if and when the foregoing provisions of this paragraph shall have become effective.

3. The Construction Company may sell, and may keep sold as against any cancellations or foreclosures heretofore or hereafter effected, 170,000 shares in the capital stock of said Canal Company, (which shall represent the right upon the part of the holders or purchasers of such shares to irrigate 170,000 acres of land from the irrigation system of the Construction Company,) and may collect the purchase price therefor, upon the understanding, however, that the sales of such stock, aggregating something more than 172,000 shares thereof, heretofore made by the Construction Company, will be adjusted within the limit above provided through the cancellation of sufficient of such shares which have heretofore come under its control, through foreclosure or otherwise.

4. If at any time in the future the Construction Company, its successors or assigns, shall conclude that the said irrigation system and the water supply therefor, will serve, or can be made to serve, more than 170,000 acres of land, and if the Construction Company is then unable to agree with said Canal Company as to what excess, if any, may be

so served, then and in that event, and so often as such may be the case, the Construction Company, its successors or assigns, may bring an action in any court of competent jurisdiction to have said question judicially determined; and the question as to where the water must be measured to the contract holder under his contract with the Construction Company, and the question as to how much water must be so measured, as to any excess above said 170,000 acres, are not covered or affected by this stipulation and agreement or by any judgment which may be rendered hereunder.

5. The several contracts between the State of Idaho and the Construction Company and said Bondholders' Commitee, and the various amendments to said contracts, are now and shall be binding and of full force and effect as between all parties concerned therein, except as the invalidity of any such contract may be pleaded in defense of any suit brought against any individual, but no statement contained in this stipulation and agreement shall be taken in any such suit as evidence of non-performance by the Construction Company of any of its obligations, covenants or agreement set forth in its several contracts with the State of Idaho or with any contract holders.

6. The parties of the first part will not collectively or individually, commence any other action, actions or proceedings, before any court or board, for the determination or consideration of any or

either of the issue, of law or fact, involved in this action; and this stipulation and agreement, as well as the judgment to be rendered hereunder, may be pleaded or shown in evidence, and shall constitute a complete defense or estoppel in any such action, actions or proceedings.

7. All of the terms and provisions of this stipulation and agreement may be taken by the Court as true and with the force of evidence, for the purpose of any judgment or decree which the Court may deem proper to enter herein and findings of fact and conclusions of law are hereby expressly waived.

8. The Continental and Commercial Trust and Savings Bank, as Trustee, becomes a party to this stipulation and agreement through its attorneys of record in this case for the purpose only of expressing its consent to the entry of judgment hereunder.

Dated December 18, 1917.

R. V. WILCOX,
ADAM B. BARCLAY,
E. M. WOLFE,
GUTHRIE & BOWEN & A. A. FRASER,
As Attorneys for Parties of the First
Part.

P. S. HADDOCK,
E. A. WALTERS,
COBB WHEELRIGHT AND DILLIE,
As Attorneys for Construction Company.
HAWLEY & HAWLEY,
As Attorneys for Said Trustee.

EXHIBIT "B"
IN EQUITY.

*In the District Court of the United States for the
District of Idaho, Southern Division.*

OLIVER HILL; W. P. RICE; E. C. GLEASON;
CLARA T. VEAZIE; H. E. BARRETT; A. A.
HOLBROOK; ROMAN M. TISS; LEWIS A.
LEINBAUGH; J. F. HOBBS; JOHN T.
THORPE.

Plaintiffs

vs.

TWIN FALLS NORTH SIDE LAND AND WA-
TER COMPANY, a Delaware Corporation, and
THE CONTINENTAL AND COMMERCIAL
TRUST AND SAVINGS BANK, a Corporation,
Trustee,

Defendants

ROBERT ROGERSON, KENNETH McLEOD and
BLAINE FURGERSON,

Intervenors

IN EQUITY, NO. 544.
DECREE.

This cause came on to be heard at this term. That permission was given to the above named Intervenors to file their bill in intervention and it was agreed that the material allegations of said bill in intervention were deemed denied by the plaintiff and defendants. Findings of fact and conclusions

of law were expressly waived by all parties in open Court. That a stipulation of facts and of settlement of this case and providing for judgment thereon was entered into by the parties hereto and said stipulation presented to the Court and duly considered, whereupon, it was ordered, adjudged and decreed as follows:

I.

That the Construction Company shall complete its irrigation system in accordance with the terms and conditions of its existing contracts with the State of Idaho, (including the contract dated January 22, 1916, between the Bondholders' Committee, so called, and said State) and when said system shall have been so completed and such completion shall have been duly certified by the Engineer of said State, as provided in said contracts, then and thereupon a full and complete compliance will have been affected as between the Construction Company and said State and the holders of contracts for the purchase of its water rights.

II.

That when its irrigation system shall have been so completed and shall have been finally accepted by the Board of Land Commissioners of said State, then and thereupon the Construction Company shall cause to be assigned to the North Side Canal Company, Limited, all of the right, title and interest in and to the Jackson Lake Reservoir, and to all stor-

age water, therein (estimated at 315,000 acre feet), as embodied and set forth in that certain agreement between the United States of America and the Kuhn Irrigation and Canal Company, a Delaware Corporation, dated February 25, 1913, a copy of which is now on file in the office of said Board of Land Commissioners, (and shall at once cause a proper assignment of said last mentioned agreement to be duly executed and placed in escrow in the Pacific National Bank of Boise, Idaho, to be delivered to said Canal Company, if and when the foregoing provisions of this paragraph shall have become effective.

III.

That the Construction Company may sell, and may keep sold as against any cancellation or foreclosures heretofore or hereafter effected, 170,000 shares in the capital stock of said Canal Company, (which shall represent the right upon the part of the holders or purchasers of such shares to irrigate 170,000 acres of land from the irrigation system of the Construction Company), and may collect the purchase price therefor, upon the understanding, however, that the sales of such stock aggregating something more than 712,000 shares thereof, heretofore made by the Construction Company shall be adjusted within the limit above provided through the cancellation of sufficient of such shares which have heretofore come under its control, through foreclosure or otherwise.

IV.

That, if at any time in the future the Construction Company, its successors or assigns, shall conclude that the said irrigation system and the water supply therefor, will serve, or can be made to serve, without *viliating* the settlers' contracts, more than 170,000 acres of land, and if the Construction Company is then unable to agree with said Canal Company as to what excess, if any, may be so served, then and in that event, and so often as such may be the case, the Construction Company, its successors or assigns, may bring an action in any court of competent jurisdiction to have said question judicially determined; and the question as to where the water must be measured to the contract holder under his contract with the Construction Company, and the question as to how much water must be so measured, thereunder for the purpose of determining what acreage may be irrigated above said 170,000 acres, are not covered or affected by this decree.

V.

That the several contracts between the State of Idaho and the Construction Company and said Bondholders' Committee, and the various amendments to said contracts, are now and shall be binding and of full force and effect as between all parties concerned therein, except as the invalidity of any such contract may be pleaded in defense of any suit brought against any individual, but no state-

ment contained in said stipulation and agreement of this decree shall be taken in any such suit as evidence of non-performance of the Construction Company of any of its obligations, covenants or agreements set forth in its several contracts with the State of Idaho or with any contract holder.

VI.

Each party hereto shall pay his own costs.

Dated at Boise, Idaho, this 20th day of December, 1917.

FRANK S. DIETRICH,
District Judge.

EXHIBIT "E"
DEPARTMENT OF RECLAMATION
CAREY ACT ORDER

August 6, 1920.

*In Re: Twin Falls North Side Land and Water
Company's Project.*

Final Acceptance of Works.

WHEREAS, The Twin Falls North Side Land and Water Company, on the 15th day of April, 1907, the 21st day of August, 1907, and the 2nd day of January, 1909, entered into three certain contracts with the State of Idaho, acting by and through the State Board of Land Commissioners, for the construction of a certain irrigation system with appurtenant structures under and by virtue of the law commonly known as the Carey Act, and the

provisions of the statutes of the State of Idaho, relating thereto which said contracts have from time to time altered and amended in various respects by resolutions and orders of said Board and by subsequent agreements of said parties, and by an agreement with the depositing Bondholders all as shown by the records and files of the Department of Reclamation and State Board of Land Commissioners; the plans, specifications and design of which have from time to time been modified and altered, and such alterations and modifications have been approved by the State Engineer of Idaho and the Commissioner of Reclamation of the State of Idaho, all as shown by the records and files; and,

WHEREAS, Under said contracts and the law relating thereto, it is the duty of the Department of Reclamation to receive and to accept said irrigation system with appurtenant structures, for and on behalf of the State of Idaho, and the North Side Canal Company, Limited, and the Stockholders thereof, and the North Side Pumping Company and the Stockholders thereof, when the same shall have been constructed and completed in accordance with the provisions and terms of said contracts and the alterations and amendments and modifications thereof and agreements pertaining thereto as hereinbefore detailed; and,

WHEREAS, The said Twin Falls North Side Land and Water Company has tendered to the State of Idaho, and the Department of Reclamation, said

irrigation system and appurtenant structures as completed according to contracts, amendments thereto and supplemental agreements and orders pertaining thereto, for acceptance on behalf of the State of Idaho, and on behalf of the North Side Canal Company, Limited, and stockholders thereof, and the North Side Pumping Company and stockholders thereof; and,

WHEREAS, Upon receipt of such tender an exhaustive and extended investigation and examination of the said Irrigation System and appurtenant structures has been conducted by the Department of Reclamation, acting in cooperation with the settlers upon the project, the officers of the North Side Canal Company and their engineer, Mr. R. K. Tiffany, together with the engineers and officers of the Twin Falls North Side Land and Water Company, which examination has disclosed the fact that the said irrigation system and appurtenant structures have been constructed and completed in accordance with the said plans and specifications as the same have been amended, changed or modified as hereinabove set forth; except in certain particulars herein-after specifically mentioned. The estimated cost of completing these specified items is \$8,760.00 detailed as follows:

“J” Lateral Headworks, lower-
ing radial gates.....\$ 300.00

Improving "K" Coulee.....	2,000.00
Cost of completing certain Laterals:	
X-26.....	25.00
X- 9.....	50.00
X- 6.....	35.00
X-49.....	50.00
W-7).....	
W-8).....	300.00
Improving X-9 runoff.....	3,000.00
To care for excess maintenance caused by Y-9 runoff.....	3,000.00
	<hr/>
Total.....	\$8,760.00

and,

WHEREAS, the Board of Directors of the North Side Canal Company, Limited, has, by resolution adopted July 31, 1920, a certified copy of which is on file in the Department of Reclamation of the State of Idaho, authorized this Department to approve the acceptance of said sum of \$8,760.00 by the said North Side Canal Company, Limited, from the Twin Falls North Side Land and Water Company, in lieu of the performance of the said work hereinbefore detailed, and more particularly described, specified and set forth in the report of R. K. Tiffany directed to the Directors of the North Side Canal Company, Limited, bearing date of July 23, 1920, a copy of which is on file in this Department, and has by resolution requested this Department to accept said irrigation system and appurtenant structures as completed according to the con-

tract and amendments of said contract as hereinbefore detailed, and as a full, complete and entire compliance therewith for and on behalf of the State of Idaho, and for and on behalf of the North Side Canal Company, Limited, and the stockholders thereof, and the North Side Pumping Company and the stockholders thereof; and

WHEREAS, The treasurer of the North Side Canal Company, Limited, has certified to this office that the Twin Falls North Side Land and Water Company has paid to said North Side Canal Company, Limited, the sum of \$8,760.00, pursuant to the resolution of the Board of Directors of said Canal Company;

NOW, THEREFORE, in consideration of the premises, and the foregoing recitals, I, W. G. Swendsen, the Commissioner of Reclamation of the Department of Reclamation of the State of Idaho, by virtue of the authority in me vested by the statutes of the State of Idaho, and acting for and on behalf of the State of Idaho, and for and on behalf of the North Side Canal Company, Limited, and the stockholders thereof, and the North Side Pumping Company and the stockholders thereof, do hereby order and direct as follows:

1. That that certain irrigation system with appurtenant structures as now constructed by the Twin Falls North Side Land and Water Company be, and the same is hereby accepted for and on be-

half of the State of Idaho, and for and on behalf of the North Side Canal Company, Limited, and stockholders thereof, and the North Side Pumping Company and stockholders thereof, as a full and complete performance of all contract and other requirements imposed upon said Twin Falls North Side Land and Water Company, pertaining to the construction of said irrigation system and appurtenant structures, which said irrigation system and appurtenant structures were constructed under and by virtue of certain contracts made by and between the State of Idaho, acting by and through the State Board of Land Commissioners, as the party of the first part, and the Twin Falls North Side Land and Water Company, as the party of the second part, and entered into on the 15th day of April, 1907, the 21st day of August, 1907, and by the 2nd day of January, 1909; and which said contracts have from time to time been altered and amended in various respects by resolutions and orders of the State Board of Land Commissioners and Department of Reclamation and supplemental agreements between said mentioned parties and an agreement with depositing Bondholders, and which plans and specifications detailed in said contracts have from time to time been altered and amended and approved by the State Engineer of the State of Idaho and the Commissioner of Reclamation of the State of Idaho.

2. That the complete ownership, title and control of said irrigation system and appurtenant

structures as now built and constructed, may now pass to and become vested, respectively, in the North Side Canal Company, Limited, and the North Side Pumping Company, being corporation organized for the purpose of acquiring, maintaining and operating said irrigation system in the interest of the respective owners of water rights therein, and the said Twin Falls North Side Land and Water Company is hereby relieved from any further duty or liability in relation to said irrigation system or appurtenant structures.

3. That the payment of the sum of \$8,760.00 made by the Twin Falls North Side Land and Water Company to the North Side Canal Company, Limited, shall relieve the Twin Falls North Side Land and Water Company from the performance of the things detailed hereinbefore, and detailed in the said report of the said R. K. Tiffany; that all things pertaining to the construction of said irrigation system and appurtenant structures required of said Twin Falls North Side Land and Water Company by the State Board of Land Commissioners of the State of Idaho, or by the State Engineer, or the Commissioner of Reclamation of Idaho, have been fully and completely performed by said Twin Falls North Side Land and Water Company, except those things hereinbefore enumerated, and in full settlement and adjustment of which I hereby approve payment of \$8,760.00 to the North Side Canal Com-

pany, Ltd., by the said Twin Falls North Side Land and Water Company.

4. That those certain Liberty Bonds of the United States Government, numbered 430638 to 430647, in the sum of Five Thousand (\$5,000.00) Dollars heretofore deposited with the State Board of Land Commissioners, by the Twin Falls North Side Land and Water Company under resolution adopted November 1, 1918, be now returned and delivered to the North Side Canal Company, Limited, from the proceeds of which the said North Side Canal Company, Limited, can make such improvements and changes at the "controlling works" in such manner and at such times as its Board of Directors shall deem proper, and that said North Side Canal Company, Limited, shall be under no obligation to return any part or portion of said fund to the Twin Falls North Side Land and Water Company, if the same be not by it expended in the alteration or improvement of said "controlling works," and said Twin Falls North Side Land and Water Company is hereby relieved from any further duty or obligation in relation to said "controlling works," and the future repair, alteration, or construction thereof.

5. That that certain agreement, made the 22nd day of January, 1916, by and between William A. Durst, of Minneapolis, Minnesota; Haydn S. Cole, of St. Paul, Minnesota, and George L. Edwards, of St. Louis, Missouri, the parties of the first part, and

acting as a committee of depositing bondholders, and the State of Idaho, as the party of the second part, has been completely performed and fulfilled and satisfied and the official of the State of Idaho having the present custody of the first mortgage six percent gold bonds of the Twin Falls North Side Land and Water Company, detailed in said agreement of the par value of Three Hundred Thousand (\$300,000) Dollars, together with interest coupons thereto attached, shall forthwith deliver the same to the said parties of the first part or to their written order.

6. That any and all bonds that may have been given to the State of Idaho by the said Twin Falls North Side Land and Water Company under the provisions of the various State contracts or amendments thereto, conditioned upon the final completion of the irrigation system and works by the said Twin Falls North Side Land and Water Company, be and the same are, hereby released, provided, however, that prior to any additional irrigation works or appurtenant structures being constructed by the Twin Falls North Side Land and Water Company or its assigns, it or they shall enter into contracts with the State of Idaho for so doing and give such bond as may be required.

7. This order is made only for the purpose of accepting as completed the physical properties as now built and constructed by the Twin Falls North Side Land and Water Company, and all has herein

recited and such acceptance is based upon a present carrying capacity of the irrigation works as now constructed and operated, sufficient to serve or irrigate at least 170,000 acres of land but nothing in this order shall be construed so as to fix, curtail, or place a limitation upon the stock of the North Side Canal Company, Limited, which may hereafter be sold by the Twin Falls North Side Land and Water Company, or the water rights in said irrigation system which may yet remain to be hereafter sold by the Twin Falls North Side Land and Water Company, provided, however, that in the event water stock or water rights in said irrigation system are hereafter sold by order of Court or otherwise, in excess of the said 170,000 acres or shares, the said Twin Falls North Side Land and Water Company or its successors in interest shall be required to, at their own expense, perform such work as may be necessary in increasing the capacity of the irrigation system, should such increase of capacity at that time be found necessary, by enlargement or otherwise, sufficient to provide a safe carrying capacity for such additional water rights or water stock as may be sold in addition to the 170,000 shares.

(Signed) W. G. SWENDSEN,

(SEAL) Commissioner of Reclamation.

Attest: FLEDA REYNOLDS,
Carey Act Clerk.

EXHIBIT "F"

THIS AGREEMENT, Made and entered into this 27th day of July, 1921, by and between the TWIN FALLS NORTH SIDE LAND AND WATER COMPANY, party of the first part (hereinafter for brevity called The Land and Water Company), and the NORTH SIDE CANAL COMPANY, LIMITED, party of the second part (hereinafter for brevity called the Canal Company), and the State of Idaho acting by and through the Department of Reclamation, party of the third part (hereinafter for brevity called the State), WITNESSETH:

THAT WHEREAS, The State did prior hereto, for the purpose of reclamation and settlement, procure to be made by the United States, under the provisions of what is commonly called the "Carey Act" the segregation of certain public lands, as set forth and described in those certain land lists known as Idaho Carey Act Segregation Lists Nos. 4, 6, 11, 13 and 24, copies of which are now on file in the Department of Reclamation for said State, comprising what is known as the Twin Falls North Side Land and Water Company Irrigation Project; and

Whereas, The Land and Water Company did on the 15th day of April, 1907, the 21st day of August, 1907, and the 2nd day of January, 1909, enter into certain contracts with the State to construct an irrigation system for the reclamation of said lands, and certain agreements supplemental thereto, all as described and detailed in said contracts and supple-

mental agreements (and which have been amended from time to time) which said contracts and said supplemental agreements and amendments thereto are now on file and of record in the Department of Reclamation for said State; and

Whereas, The work to be done and performed and rights to be acquired under said several contracts, supplemental agreements and amendments thereto have been completed and acquired, and said work has been accepted by said State, as more fully appears from its order made on the 6th day of August, 1920, copy of which said order is attached hereto and marked "Exhibit A" and made a part hereof; the total amount of stock in the Canal Company to be sold and kept sold by said Land and Water not being fixed or determined by said Order, it being now intended, however, by the State, by this agreement to so fix and determine such total amount of stock to be sold and kept sold by said Land and Water Company, and thereby and hereby fix and determine the same; and

WHEREAS, The Canal Company is the company mentioned and described in said State Contracts, and is now vested with the franchises, privileges and titles therein enumerated, and is now fully and completely exercising the powers and privileges accorded to it by law; and

WHEREAS, the North Side Pumping Company is a stockholder of the Canal Company, and is a corporation organized to operate that portion of said

North Side Irrigation Project which is served by means of pumps; and

WHEREAS, In a certain action in the United States District Court for the State of Idaho, in and for the Southern Division, in which Oliver Hill, et al, were plaintiffs, and the Land and Water Company, et al, were defendants, a certain stipulation was entered into on or about the 18th day of December, 1917, and a decree by stipulation was duly entered therein on or about the 20th day of December, 1917, relating among other things to the number of shares of stock in said Canal Company which the Land and Water Company might then sell and keep sold, which at that time was agreed among the parties to the said action, and confirmed by said Court at 170,000 shares, a copy of which said Decree is attached hereto, marked Exhibit "B" and made a part hereof, which said Decree (Exhibit "B") provides among other things as follows:

"4. That if, at any time in the future, the Construction Company, its successors, or assigns, shall conclude that the said irrigation system and the water supply therefor, will serve or can be made to serve without violating the settlers' contracts, more than 170,000 acres of land and if the Construction Company is then unable to agree with said Canal Company, as to what excess, if any, may be served, then, and in that event, and so often as such may be the case, the Construction Company, its successors,

or assigns, may bring an action in any Court of competent jurisdiction, to have said question judicially determined; and the question as to where the water must be measured to the contract holder, under the contract with the Construction Company, and the question as to how much water must be measured thereunder for the purpose of determining what acreage may be irrigated above said 170,000 acres are not covered or affected by this decree.”

AND WHEREAS, Since the date of said Decree, the capacity of said canal system and its efficiency have been greatly increased, a considerable portion of which work was not required by said State Contracts, but was performed by the Land and Water Company without contract requirement for the purpose of making it possible to increase the area that could be reclaimed, and to the end that the Land and Water Company might sell and keep sold more than 170,000 shares of the capital stock of the Canal Company as provided in said paragraph four of said Decree (Exhibit “B”); and

WHEREAS, Said work of canal enlargement and improvement has been completed, including an increased right in the Milner Diversion Dam, by means of which about 500 second feet of additional water can now be diverted into said canal system; and

WHEREAS, Said work of canal enlargement and improvement has been completed, including an increased right in the Milner Diversion Dam, by means of which about 500 second feet of additional water can now be diverted into said canal system; and

WHEREAS, It has been determined and ascertained by the parties hereto, and so agreed, that said irrigation system and the present water supply therefor can, without violating the terms or provisions of the settlers' contracts, irrigate and reclaim 185,000 acres of land; and

WHEREAS, Acting under the provisions of paragraph four of said Federal Decree (Exhibit "B" hereto), which said paragraph is hereinbefore quoted, it is the desire of the Canal Company, the Land and Water Company, and the State, to agree as to the number of shares of stock of the Canal Company which the Land and Water Company may sell and keep sold in excess of 170,000 shares;

NOW THEREFORE, For the purpose and with the desire of so fully and completely agreeing, and for the purpose of avoiding the necessity of said parties resorting to the courts for a determination of said question, for and in consideration of the rights, privileges, and properties hereby conveyed, and the covenants, terms and agreements herein mentioned, and to be observed and performed by the respective parties hereto,

IT IS HEREBY AGREED AS FOLLOWS:

1. That the Land and Water Company may sell and keep sold 185,000 shares of the capital stock of the Canal Company, representing the right on the part of the Land and Water Company to sell water rights for the irrigation of 185,000 acres of land, hereby granting and confirming unto the Land and Water Company the right to sell and dispose of 15,000 shares of the capital stock of the Canal Company in addition to the number of shares that is at the present time sold and outstanding, or authorized as aforesaid to be sold and kept outstanding; that the sale and disposal of such 15,000 shares of stock shall be extended over such period of time, not less than five years from and after the date of this contract, in such manner as not to unduly interfere with the operation of the canal system, providing that three thousand shares may be sold each year hereafter from and after the date hereof, and such shares in excess thereof as in the opinion of the Board of Directors of the Canal Company may be sold without undue interference with the distribution of water through said system, and that such lands when entered, to which such additional shares shall be made appurtenant, shall be subject to the same assessment for maintenance and operation as to other lands under said canal system, and the same charges for rights in the American Falls Reservoir, if any rights be hereinafter acquired by the

Canal Company, as other lands in the same segregation are charged for such rights if so acquired.

2. That the Land and Water Company shall, on or before the first day of November in each year hereafter, select from the lands subject to entry, which can be served with water for irrigation from the irrigation system of the Canal Company, such number of acres, the irrigable agricultural portion of which shall not exceed three thousand acres, for which the said Land and Water Company may thereafter sell shares of stock of said Canal Company, as herein provided, or may in lieu of any portion thereof sell water rights for use on lands taken up under the Desert Land or Homestead Acts, or for lands belonging to the State of Idaho, or otherwise privately owned, the total thereof, however, not to exceed said three thousand acres in any year, as herein provided, unless an increased amount is authorized as aforesaid by the Directors of the Canal Company. It is understood that the first selection shall be made on or before the first day of November, 1921, or as soon thereafter as possible, in the event that the Canal Company shall hereafter acquire an interest in the proposed American Falls Reservoir, or shall have water otherwise available for the reclamation of the remaining lands in said project in excess of said 185,000 acres, the Land and Water Company shall, upon the request of the Canal Company at said time such water is available, select the remainder of said 15,000 acres, if any por-

tion thereof shall not then have been selected, as herein provided. That in the event the enlargement or construction of any lateral is necessary, or a new or enlargement of any existing pumping plant is necessary, for the delivery of the water to the lands or any portion thereof so selected, for which water rights represented by shares of stock of the Canal Company shall have been sold, the same shall be done by the Land and Water Company at its sole expense at such time and in such manner as not to interfere with the operation of the Canal Company, the plans therefor to be mutually agreed upon by the Land and Water Company and the Board of Directors of the Canal Company or the Board of Directors of the Pumping Company, as the case may be, and approved by the Commissioner of Reclamation of the State of Idaho; in case of failure to so agree within 30 days, then such plans as may be necessary for said work shall forthwith be fixed and determined by the Commissioner of Reclamation of the State of Idaho, and such work shall be performed in accordance with said plans, and when so performed shall be approved and accepted by said Commissioner.

3. That the Twin Falls North Side Investment Company, Limited, shall not so develop and improve its lands as to increase the demand for water thereon faster than an average of three thousand acres a year, unless such figure be increased by mutual agreement between the Board of Directors of said

Canal Company and the Land and Water Company. In this paragraph the Land and Water Company speaks for and guarantees the performance and observance hereof by said Twin Falls North Side Investment Company, Limited.

4. That the parties hereto (the Canal Company acting for and on behalf of its stockholders, including the plaintiffs and intervenors in said Federal suit) deem and consider the agreement entered into herein a full and complete compliance with the provisions of said Decree, hereinbefore mentioned, and particularly paragraph 4 thereof, and the Stipulation upon which the same is based, and that this contract and agreement shall be considered, if the same be deemed necessary. A stipulation by and between the parties in said suit for the amendment of said Decree as herein recited, in so far as applicable.

5. That this contract and the number of shares of stock in said Canal Company hereby agreed and authorized to be sold and kept sold by said Land and Water Company is and shall be deemed in compliance with and not in violation of that provision of the contracts between the Land and Water Company and the State, which provide that in no case shall water rights or shares be dedicated to any lands or sold beyond the carrying capacity of the canal, or in excess of the appropriation of water therefor.

6. That no water shall be sold for or required to be furnished to school lands situated within the

segregations after the sales of shares of stock or water rights in the Canal Company have been made by the Land and Water Company to the extent of 185,000 shares as herein provided.

7. That the said Land and Water Company does hereby assign, transfer, set over and relinquish all its remaining rights, equities and franchises in and to said segregations, its privileges therein and thereto, its irrigation system, and rights, franchises and equities of whatever nature or kind connected therewith, to the North Side Canal Company, Limited, or the North Side Pumping Company, as the case may be, not heretofore conveyed or assigned, subject, however, to the right of the Land and Water Company to sell and keep sold the maximum of 185,000 shares of stock in said Canal Company representing the right to irrigate 185,000 acres of land within said segregations from the present water supply through said irrigation system as now or hereafter constructed, and reserving its right, title, estate, lien or interest in and to all the lands or any portion thereof to which said 185,000 shares of stock are or may be made appurtenant, also reserving all its assets represented by land, mortgages, water contracts, contracts of sale, accounts and bills receivable, stocks and bonds, and also its tangible personal property, intending hereby to give and grant to said North Side Canal Company, Limited, or said North Side Pumping Company, as the case may be, full power and right to exercise those remaining

rights, privileges, and franchises which might otherwise be exercised by said Land and Water Company. It being understood that the rights given and granted to the said Pumping Company hereby relate only to such portion of said project as can only be served by pumping water therefor and for which said Pumping Company shall have or acquire stock in said Canal Company.

8. The State hereby consents and assents to the transfer or assignment hereby made by the Land and Water Company to the Canal Company, and to the North Side Pumping Company.

9. That the respective parties hereto, hereby covenant, stipulate and agree that the terms, conditions, provisions and covenants of all contracts between the Land and Water Company and the State of Idaho, or the Bondholders' Committee and the State of Idaho, and all other contracts or agreements by and between either of the parties hereto have been fully complied with, and performed, and as to all matters not otherwise reserved herein, the rights of said Land and Water Company in such contracts and agreements are hereby terminated.

The terms and conditions of this contract shall extend to and be binding upon the successors and assigns of the parties hereto.

The execution of this agreement has been duly authorized by resolutions of the Board of Directors of the first and second parties hereto, and said parties hereto, in pursuance thereof, have caused

their corporate names and seals to be hereunto affixed by their proper officers.

IN WITNESS WHEREOF, The parties have hereunto set their hands and seals, the day and year first above written.

Executed in triplicate.

TWIN FALLS NORTH SIDE LAND AND WATER COMPANY,

By W. A. DURST, President.
Party of the First Part.

Attest:

E. A. W.

R. E. S.

IRA C. OEHLER, Secretary.

NORTH SIDE CANAL COMPANY, LIMITED,

By C. C. WILBURN, President.

(SEAL) Party of the Second Part.

Attest:

AB. B.

For Canal Company.

HARVEY W. HURLEBAUS,
Secretary.

STATE OF IDAHO,

By W. G. SWENDSEN,

Commissioner of the Department of Reclamation,

(SEAL) Party of the Third Part.

Attest:

ALTA C. PURPUS,
Carey Act Clerk.

STATE OF MINNESOTA,)
) ss.
 County of Hennepin,)

On this 3rd day of August in the year 1921, before me, W. H. M. Adams, a Notary Public in and for said County and State, personally appeared W. A. Durst, known to me to be the President of the Twin Falls North Side Land and Water Company, and Ira C. Oehler, known to me to be Secretary of said Company, the corporation that executed the within instrument, as the party of the first part, and acknowledged to me that such corporation executed the same.

Attest, my hand and official seal, the day and year in this Certificate first above written.

W. H. M. Adams,

(SEAL)

Notary Public.

My commission expires April 17, 1923.

STATE OF IDAHO,)
) ss.
 County of Jerome)

On this 28th day of July, in the year 1921, before me, CHARLES E. LOVETT, a Notary Public in and for said County and State, personally appeared C. C. Wilburn, known to me to be the President of the North Side Canal Company, Limited, and Harvey W. Hurlebaus, Secretary thereof, the corporation that executed the within instrument as the party of the second part, and acknowledged to me that such corporation executed the same.

NORTH SIDE PUMPING COMPANY,
By CHAS. O. GREENWOOD,
(SEAL) Vice President.

Attest:

HARVEY W. HURLEBAUS,
Secretary.

The Twin Falls North Side Investment Company, Limited, accepts and approves the terms and conditions of the above and foregoing agreement, and by resolution of its Board of Directors has authorized the President and Secretary of said Board acting for said Twin Falls North Side Investment Company, to endorse and indicate said approval on said agreement.

TWIN FALLS NORTH SIDE INVESTMENT
COMPANY, LIMITED,

By W. A. DURST,,
R. E. S. (SEAL) President.

Attest:

IRA C. OEHLER, Secretary.

Endorsed, Filed Aug. 29, 1928.

W. D. McREYNOLDS, Clerk.

By M. Franklin, Deputy.

(Title of Court and Cause)

OBJECTION TO APPLICATION FOR PERMISSION TO FILE SUPPLEMENTAL BILL OF COMPLAINT.

COME NOW the defendants in the above entitled action and oppose the motion of "supplemental complainant, D. L. McClung," for an order permitting the filing of a supplemental bill of complaint herein, and move the Court for an order denying the said McClung permission to file said supplemental bill of complaint, all upon the following grounds and for the following reasons:

I.

The said defendants reiterate, adopt and by reference make a part hereof, each and all of the objections enumerated and set forth in that certain "Objection to Application for Permission to file Supplemental Bill in Intervention" filed by these defendants in this action on the 20th day of December, 1927, and to hereby urge each and all and every of said objections to this application of said McClung as fully as though set forth herein at length.

II.

Upon the further ground that the matter sought to be presented by said Motion for Permission to File Supplemental Bill, has already been decided by this Court in this action adversely to the said McClung in that the said supplemental bill is merely a

repetition of that certain "Supplemental Bill in Intervention" heretofore attempted to be filed by said McClung and which was denied by this Court.

III.

For the further reason that the matters and things attempted to be set up in paragraph XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII and XXIII, seek to present matters which are not in any way or at all germane to or connected with, the original bill of complaint herein, but are an attempt to inject into and litigate, an entirely new, separate and different cause or causes of action from that presented by the original bill of complaint and/or bill in intervention herein.

IV.

That the matters and things attempted to be set up in paragraphs XV to XXIII, inclusive, of the Supplemental bill of Complaint, now tendered, present only matters which, if they state any cause of action at all, have long since been barred by the Statute of Limitations of the State of Idaho and particularly by Sections 6609, 6610, 6611, 6612, 6613, 6617 and/or 6617, Idaho Compiled Statutes, 1919.

That this objection and motion is made upon all of the records and files of this action and particularly upon the affidavit of E. A. Walters with the exhibits thereto attached, which was attached to, and by reference made a part of, that certain "Ob-

jection to Application for Permission to File Supplemental Bill in Intervention" which was filed in this Court on the 20th day of December, 1927, and which latter is particularly by reference, made a part hereof.

Dated this 20th day of September, 1928.

WALTERS & PARRY,
Attorneys for Defendants

(Service Acknowledged)

Endorsed: Filed Sept. 21, 1928.

W. D. McREYNOLDS, Clerk.

By M. Franklin, Deputy.

(Title of Court and Cause)

MEMORANDUM DECISION.

Oct. 3, 1928.

J. B. ELDRIDGE,

Attorney for Supplemental Complainant

WALTERS & PARRY,

Attorneys for Defendants

CAVANAUGH, DISTRICT JUDGE:

This is the second application of D. L. McClung for an order permitting him to file a supplemental

bill of complainant in the original action in which the decree in question was rendered. The first application was denied for the reasons set forth in the memorandum opinion of this Court of date February 6, 1928, which is here referred to. The reasons now advanced in the second application are practically the same as were advanced and passed upon in the first application, and attention is called to the Court's views then expressed in its memorandum opinion as reasons why the second application should be denied. It follows then that the second motion for permission to file the proposed bill is denied.

Endorsed: Filed Oct. 3, 1928.

W. D. McReynolds, Clerk.

By M. Franklin, Deputy.

(Title of Court and Cause)

ORDER DENYING SECOND APPLICATION TO
FILE SUPPLEMENTAL BILL
OF COMPLAINT.

Upon consideration, and in harmony with Memorandum Decision this day filed.

BE IT ORDERED, That the second motion for permission to file proposed supplemental bill of com-

plaint be and the same is hereby denied, exceptions allowed.

Dated: Boise, Idaho, October 3, 1928.

(Sgd.) CHARLES C. CAVANAH,

District Judge

Endorsed: Filed Oct. 3, 1928.

W. D. McReynolds, Clerk.

By M. Franklin, Deputy.

(Title of Court and Cause)

ORDER FOR CERTIFYING ORIGINAL
EXHIBITS.

Application having been made to this Court for an Order for the Clerk of this Court to certify up the exhibits attached to the "Objection to Application for Permission to File Supplemental Bill in Intervention" by D. L. McClung in the above entitled cause, for the reason that said exhibits consist in large part of printed pamphlets and printed contracts and copies of Complaints in other proceedings and copies of contracts, and

IT APPEARING TO THE COURT that said exhibits could be more readily examined by the members of the Appellate Court in their printed form and in the form in which they were attached to said Objections than if the same were printed in a transcript and would be much more economical for parties litigant to have the same sent up as exhibits

and far more convenient for the members of the Court, as aforesaid.

WHEREFORE, IT IS ORDERED, That the exhibits attached to the "Objection to Application for Permission to File Supplemental Bill in Intervention" by D. L. McClung, be certified up as exhibits by the Clerk of this Court, and that the same be not incorporated in the transcript on appeal in said cause.

Dated this the 21st day of December, 1928.

CHARLES C. CAVANAH,
District Judge

Endorsed: Filed Dec. 21, 1928.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause)

PETITION FOR APPEAL.

Comes now D. W. McClung, supplemental complainant in the above entitled cause, and says:

That on the 3rd day of October, 1928, this Court entered judgment herein in favor of defendants and against this supplemental complainant in denying the petition of this petitioner to file a supplemental bill in said above entitled cause, and in the denial of the petition of this petitioner to file his said supplemental bill certain errors were committed to the manifest prejudice of this supplemental complainant, all of which appears more fully and in

detail from the Assignments of Error filed with this petition.

WHEREFORE, THIS SUPPLEMENTAL COMPLAINANT PRAYS, That an appeal may be allowed by him from the United States District Court for the District of Idaho, Southern Division, to the United States Circuit Court of Appeals for the 9th Circuit for the correction of the errors so complained of, and that a transcript of the record proceedings or papers upon which said judgment or order was passed duly authenticated may be sent to the said United States Circuit Court of Appeals for the 9th Circuit, and that this supplemental complainant tenders herewith a bond in the sum of three hundred (\$300.00) dollars to cover costs, and prays that said appeal be allowed.

Dated at Boise, Idaho, this the 18 day of December, 1928.

J. B. ELDRIDGE,
Attorney for Supplemental Complainant
Residence, Boise, Idaho

Endorsed: Filed Dec. 18, 1928.

W. D. McREYNOLDS, Clerk.

By M. Franklin, Deputy.

(Title of Court and Cause)

ASSIGNMENTS OF ERROR.

Comes now D. L. McClung, the supplemental complainant in the above entitled cause, by his attorney, and in connection with his petition for appeal herein says that there is manifest error in the record proceedings and judgment and order herein, and it particularly assigns the following error:

That the Court erred in entering judgment or order denying the right of the supplemental complainant and petitioner in the above entitled cause to file his supplemental bill therein.

WHEREFORE, THE SUPPLEMENTAL COMPLAINANT PRAYS, That judgment of the District Court be reversed, and that the Court be directed to enter an order permitting the supplemental complainant to file his supplemental bill in said cause. That supplemental complainant have such other and further relief as may appear equitable and just.

J. B. ELDRIDGE,

Attorney for Supplemental Complainant

Endorsed: Filed Dec. 18, 1928.

W. D. McREYNOLDS, Clerk.

By M. Franklin, Deputy.

(Title of Court and Cause)

ORDER ALLOWING APPEAL.

Now, to-wit, on the 18th day of December, 1928, it is hereby ordered that the above and foregoing Petition for Appeal is hereby granted and allowed as prayed for upon the filing of a bond for costs in the sum of three hundred (\$300.00) dollars with sufficient sureties to be conditioned as required by law.

CHARLES C. CAVANAH,
District Judge

Endorsed: Filed Dec. 18, 1928.

W. D. McREYNOLDS, Clerk.

By M. Franklin, Deputy.

(Title of Court and Cause)

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:

That I, D. L. McClung, the supplemental complainant, as Principal, and THE CONTINENTAL CASUALTY COMPANY, as Surety, acknowledge ourselves to be jointly indebted to the Plaintiffs, OLIVER HILL, W. P. RICE, E. C. GLEASON, CLARA T. VEAZIE, H. E. BARRETT, A. A. HOLBROOK, ROMAN M. TISS, LEWIS A. LEINBAUGH, J. F. HOBBS and JOHN T. THORPE, to the Defendants, TWIN FALLS NORTH SIDE LAND AND WATER COMPANY, a Delaware

Corporation, and the CONTINENTAL AND COMMERCIAL TRUST AND SAVINGS BANK, a Corporation, Trustee, and to the Intervenors, ROBERT ROGERSON, KENNETH McLEOD, and BLAINE FURGERSON, appellees in the above cause, and to each of said appellees, in the sum of Three Hundred and No/100 (\$300.00) Dollars, conditioned that:

WHEREAS, on the 3rd day of October, 1928, in the District Court of the United States, for the District of Idaho, Southern Division, in a suit pending in that Court, wherein, to the Plaintiffs, OLIVER HILL, W. P. RICE, E. C. GLEASON, CLARA T. VEAZIE, H. E. BARRETT, A. A. HOLBROOK, ROMAN M. TISS, LEWIS A. LEINBAUGH, J. F. HOBBS, and JOHN T. THORPE, to the Defendants, TWIN FALLS NORTH SIDE LAND AND WATER COMPANY, a Delaware Corporaton, and THE CONTINENTAL A N D COMMERCIAL TRUST AND SAVINGS BANK, a Corporation, Trustee, and to the Intervenors, ROBERT ROGERSON, KENNETH McLEOD and BLAINE FURGERSON, which suit was numbered on the equity docket as No. 544, an order was entered denying the relief prayed for by the said D. L. McClung, the supplemental complainant, and the said D. L. McClung, having obtained an order allowing appeal to the Circuit Court of Appeals for the Ninth Circuit to reverse the said order, and a citation directed to the said appellees above mentioned, citing and ad-

monishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden in the City of San Francisco, State of California, in said circuit, within thirty days from the date of said citation.

NOW, if the said D. L. McClung shall prosecute its said appeal to effect, and answer all costs and damages if he fails to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

IN WITNESS WHEREOF, D. L. McClung has caused these presents to be executed by its proper corporate officers as Principal, and said CONTINENTAL CASUALTY COMPANY has caused its name to be subscribed and its corporate seal to be affixed thereto this 20th day of December, 1928.

(SEAL)

D. L. McCLUNG,
Per J. B. E.

CONTINENTAL CASUALTY COMPANY,
By CHAS. W. MACK,
Its Attorney-in-Fact.

Countersigned by

CHAS. W. MACK, Res. Agt.

The form of the foregoing bond and sufficiency of surety are approved this 20th day of December, 1928.

CHARLES C. CAVANAH,
District Judge

Endorsed: Filed Dec. 20, 1928.

W. D. McREYNOLDS, Clerk.

By M. Franklin, Deputy.

(Title of Court and Cause)

CITATION.

To the above named defendants and to the above named intervenors and to Walters and Parry and to E. A. Walters and R. P. Parry, Esquires, the attorneys of record of the above named defendants, and to E. M. Wolfe, Esquire, attorney of record for the above named intervenors.

The above named defendants and intervenors are hereby admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, State of California, within thirty (30) days from the date of this appeal pursuant to an appeal on file in the Clerk's office of the District Court of the United States for the District of Idaho, Southern Division, wherein D. L. McClung is plaintiff in error and you, the said defendants and intervenors, are defendants in error, to show cause, if any there be, why the judgment or order mentioned in said appeal should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS, The Honorable C. C. Cavanah, United States District Judge for the District of Idaho, this

18th day of December, 1928, and of the independence of the United States the one hundred fifty-second year.

(SEAL) CHARLES C. CAVANAH,
District Judge.

Attest:

W. D. McREYNOLDS, Clerk.

Endorsed: Filed Dec. 20, 1928.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause)

PRAECIPE FOR TRANSCRIPT.

TO W. D. McREYNOLDS, CLERK OF THE
ABOVE ENTITLED COURT:

You will please prepare the record upon the appeal of supplemental complainant and plaintiff in error, D. L. McClung, taken in the above entitled cause from the judgment or order made and entered in said cause on the third day of October, 1928, such record to consist of the pleadings, documents and papers in said cause in the following order:

1. Original Motion or Petition of First Application filed December 7, 1927.
2. Objections to Motion or Petition filed December 20, 1927.
3. Memorandum Decision of Court filed February 6, 1928.

4. Second Motion or Application filed August 29, 1928.
5. Objections to second Application filed September 21, 1928 .
6. Last Memorandum Decision of Court filed October 3, 1928.
7. Order of Court denying the right of supplemental complainant to file his supplemental bill of complaint with exceptions allowed, filed October 3, 1928.
8. All papers filed in connection with Petition for Appeal, Assignments of Error, Order Allowing Appeal, Bond on Appeal with Order approving the same, Citation together with this Præcipe, and Affidavit of J. B. Eldridge showing service of Assignments of Error, Citation and Præcipe together with your return to the Appeal and your certificate, and all papers filed in said cause after the filing of this Præcipe: Affidavits showing service of Motions.

In preparing the above record you will please omit the title to all pleadings except the supplemental bill of complainant, inserting in lieu thereof the words "title of court and cause" followed by the name of the pleading or instrument. You will also please omit the verification of all pleadings, insert-

ing in lieu thereof whenever the pleading is verified, the words "duly verified."

Dated this the 19th day of December, 1928.

J. B. ELDRIDGE,

Attorney for Supplemental Complainant and Plaintiff in Error.

Endorsed: Filed December 20, 1928.

W. D. McREYNOLDS, Clerk.

By M. Franklin, Deputy.

(Title of Court and Cause)

AFFIDAVIT

PROOF OF SERVICE

STATE OF IDAHO,)
) ss.
 County of Ada,)

J. B. ELDRIDGE, being first duly sworn, deposes and says:

That he is attorney for D. L. McClung, supplemental complainant and appellant in said cause, and that on December 20, 1928, a true copy of the Citation, Assignments of Error and Præcipe were enclosed in an envelope addressed to E. M. Wolfe, Esquire, at Twin Falls, Idaho, the then address of the said E. M. Wolfe, attorney of record for the Interveners in the above entitled cause, and that the required amount of postage was prepared and attached to said envelope and said envelope registered

to the said E. M. Wolfe and return card requested, that the registry charge on said letter was prepaid, and that the same was deposited in the United States Postoffice at Boise, Idaho, on December 20, 1928, by affiant herein, and that said Intervenors and said attorneys were so served on the 25th day of December, 1928, with said papers, as aforesaid; that on December 20, 1928, a true copy of the Citation, Assignment of Error and Præcipe were enclosed in an envelope addressed to Walters & Parry, E. A. Walters and R. P. Parry, Esquires, at Twin Falls, Idaho, the then address of the said Walters & Parry, E. A. Walters and R. P. Parry, attorneys of record for the defendants in the above entitled cause, and that the required amount of postage was prepaid and attached to said envelope and said envelope registered to the said Walters & Parry, E. A. Walters and R. P. Parry, and return card requested, that the registry charge on said letter was prepaid, and that the same was deposited in the United States Postoffice at Boise, Idaho, on December 20, 1928, by affiant herein, and that said defendants and said attorneys were so served on the 20th day of December, 1928, with said papers, as aforesaid; that affiant herein, attorney for said supplemental complainant, resides at Boise, Idaho, and that said attorneys for said defendants and intervenors reside at Twin Falls, Idaho; that there is a regular United States mail

route between Boise, Idaho, and Twin Falls, Idaho, with daily mail service.

J. B. ELDRIDGE,

Subscribed and sworn to before me this the 20th day of December, 1928.

(SEAL)

C. H. ROBERTS,

Notary Public for Idaho

Residence, Boise, Idaho

Endorsed: Filed Dec. 20, 1928.

W. D. McREYNOLDS, Clerk.

By M. Franklin, Deputy.

(Title of Court and Cause)

ORDER.

SETTLING RECORD ON APPEAL.

Upon stipulation of the parties, submitting to the Court the determination of what documents and papers shall constitute the record on appeal and to be incorporated therein, and the further determination of the objections to respondents' supplemental præcipe,

IT IS HEREBY ORDERED, that the following documents and papers and record shall be incorporated by the Clerk of this Court in the record on appeal:

1. Notice of motion and motion, filed Dec. 7, 1927, for an order permitting the supplemental complaint to be filed, and the supplemental bill and all exhibits attached thereto.

2. Objections to motion or petition, filed Dec. 20, 1927, and all exhibits attached thereto.
3. Affidavit of E. A. Walters, and all exhibits attached thereto, filed on the motion, and all exhibits presented and filed on said motion, including Exhibit "G" presented by defendants on objections, of date July 27, 1921, between the Twin Falls North Side Land & Water Co. and the North Side Canal Company, Limited.
4. Memorandum decision of the Court, filed February 6, 1928.
5. Order denying application to file supplemental bill of complaint of Feb. 6, 1928.
6. Second notice or application, filed Aug. 29, 1928, and all exhibits attached to and presented therewith.
7. Stipulation settling case for judgment of December 18, 1917.
8. Agreement of July 27, 1921, between the Twin Falls North Side Land & Water Co. and North Side Canal Company, marked Exhibit "F".
9. Objections to second application filed Sept. 21, 1928.
10. Last memorandum decision of the Court, filed Oct. 3, 1928.
11. Order of the Court denying the right of supplemental complainant to file his sup-

plemental bill of complaint, with exceptions allowed, filed October 3, 1928.

12. Order of the Court of December 21, 1928, allowing all exhibits attached to the objection to application for permission to file supplemental bill in intervention by certifying up as exhibits by the Clerk and the same be incorporated in the transcript on appeal.
13. Last or final amended bill in equity.
14. Last or final bill of intervention.
15. Last or final separate amended answer of Continental & Commercial Trust & Savings Bank.
16. Last or final separate amended and supplemental answer of Twin Falls North Side Land & Water Co.
17. All papers filed in connection with petition for appeal.

Dated: Boise, Idaho, January 29, 1929.

(Sgd.) CHARLES C. CAVANAH,
District Judge

Endorsed: Filed Jan. 30, 1928.
W. D. McREYNOLDS, Clerk.
By M. Franklin, Deputy.

(Title of Court and Cause)

STIPULATION.

IT IS HEREBY STIPULATED by and between D. L. McClung, supplemental complainant and appellant, and the defendants and respondents in the above entitled cause, that in addition to the papers heretofore ordered by this Court to be sent up on appeal as exhibits, that the following named papers be also certified up by the Clerk as exhibits in said cause: Last or Final Amended Bill in Equity; Bill in Intervention; Separate Amended and Supplemental Answer of Twin Falls North Side Land and Water Company; Separate and Amended Answer of the Continental and Commercial Trust and Savings Bank.

IT BEING FURTHER STIPULATED AND AGREED that no Answer was filed to the Bill in Intervention on account of the stipulation for decree filed in said cause.

IT IS FURTHER STIPULATED that the Court may make an order pursuant to this stipulation for the certification of said papers as Exhibits in said cause.

Dated this 5th day of February, 1929.

J. B. ELDRIDGE

Attorney for Supplemental Complainant and Appellant.

WALTERS, PARRY AND THOMAN,
E. A. WALTERS,
R. P. PARRY,
J. P. THOMAN,

Attorneys for Defendants and Re-
spondents.

Endorsed: Filed Feb. 5, 1928.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause)

ORDER.

D. L. McClung, supplemental complainant and appellant, and the defendants in the above entitled cause having stipulated that the Last or Final Amended Bill of Equity, Bill in Intervention, Separate Amended and Supplemental Answer of Twin Falls North Side Land and Water Company, Separate and Amended Answer of the Continental and Commercial Trust and Savings Bank may be certified up by the Clerk of this Court as exhibits in said cause.

WHEREFORE, IT IS ORDERED, That said papers be certified up by the Clerk of this Court as exhibits in said cause without the necessity of incorporating the same in the Transcript on Appeal.

Dated this the 5th day of February, 1929.

CHARLES C. CAVANAH,

District Judge

Endorsed. Filed February 5, 1929.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause)

CLERK'S CERTIFICATE.

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 123, inclusive, to be full, true and correct copies of the pleadings and proceedings in the above entitled cause, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, as directed by order of the Court upon settlement on stipulation of counsel herein.

I further certify that the cost of the record herein amounts to the sum of \$143.10, and that the same has been paid by the appellant.

Witness my hand and the seal of said Court this 25th day of February, 1929.

(SEAL)

W. D. McREYNOLDS, Clerk.

